

SHOSHONE-BANNOCK WASTE MANAGEMENT ACT
PERMIT REGULATIONS

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**SHOSHONE-BANNOCK WASTE MANAGEMENT ACT
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**SHOSHONE-BANNOCK WASTE MANAGEMENT ACT
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**CHAPTER 1
GENERAL PROVISIONS**

101. Scope and Purpose

- (a) The Shoshone-Bannock Waste Management Act ("Waste Management Act" or "WMA") requires a permit for the operation of waste treatment facilities, waste storage facilities, and waste disposal facilities and for facility closure and post-closure activities within lands under the jurisdiction of the Shoshone-Bannock Tribes. These Regulations establish the procedures for applying for and issuing such permits, as well as for permit renewal, modification, transfer, revocation and reissuance, and termination. These Regulations also establish fees as required by WMA §211(E).
- (b) No permit is required for treatment, storage, or disposal facilities for wastes exempt from regulation under WMA § 107. In addition, no permit is required for totally enclosed treatment facilities, as that term is defined in 40 C.F.R. § 260.10.

102. Authority

These Regulations are developed pursuant to the authority provided in §§ 201 and 211 of the Waste Management Act.

103. Definitions

As used in these Regulations, the following terms shall have the meaning ascribed to them below unless the context clearly indicates otherwise. If there is a discrepancy between the sections, the Program Manager shall resolve the discrepancy. Terms used in these Regulations for which definitions do not appear in this section shall have the meanings ascribed to them in § 105 of the Waste Management Act. References to "Chapter," "section" (or "§"), and "subsection" refer to Chapters, sections, and subsections in these Regulations unless otherwise noted.

- (a) "Permit" means a written authorization or equivalent control document issued by the Program Manager pursuant to WMA §§301 (operating permit), 410 (closure permit), and 411 (post-closure permit). It is a separate document from a "Siting certificate," although an application for a Siting certificate may be submitted together with a permit application pursuant to WMA §403.
- (b) "Regional Administrator" means the Regional Administrator of the United States Environmental Protection Agency (U.S. EP A) for Region 10 or his or her delegate.
- (c) "Siting certificate" means a written authorization or equivalent control document issued by the Program Director to the owner and/or operator of a waste disposal facility pursuant to WMA §401. It is a separate document from a "permit," although

an application for a Siting certificate may be submitted together with a permit application pursuant to WMA §403.

- (d) "Waste Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing or disposing of waste and subject to the Waste Management Act. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). Waste facilities include but are not limited to: waste disposal facilities, waste disposal units, waste disposal sites, waste storage facilities, waste treatment facilities, and waste management facilities.

104. Computation of Time

In computing any period of time described or allowed under these Regulations, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and federal and Shoshone-Bannock legal holidays shall be included. When a stated time expires on a Saturday, Sunday or federal or Shoshone-Bannock legal holiday, the stated time period shall be extended to include the next business day thereafter.

105. Conflict of Interest

- (a) The Program Manager, Hearing Moderator, or other tribal official may not perform functions provided for in these Regulations regarding any matter in which he or she:
 - (1) Has a financial interest; or
 - (2) Has any relationship with a party to or with the subject matter of the proceeding in question that would make it inappropriate for him or her to act.
- (b) If the Program Manager is disqualified pursuant to subsection (a) from performing a function under these Regulations, the Program Manager shall assign a Department Director or other program manager who has none of the infirmities listed in subsection (a) to replace him or her with regard to such functions.

CHAPTER 2
PERMIT APPLICATION PROCESS

201. Application for Permit

- (a) No person shall treat, store, or dispose of any waste or undertake any facility closure or post-closure activities without possessing a permit issued to that person by the Program Manager authorizing such activities.
- (b) Any person who requires a permit under the Waste Management Act shall complete, sign, and submit to the Program Manager an original and two copies of an application for the permit required, together with any fees required by Chapter 7 of these Regulations.
- (c) The Program Manager shall not begin processing a permit until the permit application is complete, as provided in § 202.
- (d) A person operating an existing waste facility on the effective date of these regulations shall apply for a permit within 180 days of that date.
The facility may be operated pursuant to the permit application pending a final determination by the Program on the permit application.

202. Application Requirements

- (a) Each application shall include the following information:
 - (1) Estimates with respect to composition, quantities, and concentrations of any waste identified or listed under the Waste Management Act, or combinations of any such waste and any other solid waste, proposed to be disposed of, treated, or stored, and the time, frequency, or rate at which such waste is proposed to be disposed of, treated, or stored;
 - (2) The site at which such waste or the products of treatment of such waste will be disposed of, treated, or stored;
 - (3) An Environmental Site Assessment, pursuant to § 303 of the Waste Management Act. Such Environmental Site Assessment shall be in compliance with ASTM 1527 Standards, including:
 - (A) Describing potential and real adverse environmental effects of the proposed permit activities; and
 - (B) Providing a cost-benefit analysis regarding the environmental impacts of the proposed activity balanced against the social, cultural, and economic benefits of the activity.

- (4) The following activities are exempt from the Environmental Site Assessment requirements:
 - (A) Minor modifications to permits or variances from permits;
 - (B) Minor sources of wastes;
 - (C) Activities consisting of remediation, response action, corrective action, or cleanup of soil, groundwater, or surface water; and
 - (D) Renewal or extension of an existing permit, unless said renewal or extension encompasses substantial changes that need to be addressed.
- (b) Each application must be signed and notarized, with a certification that the contents of the application are true and correct.
- (c) Each application submitted to the Program will be reviewed for completeness by the Program Manager within thirty (30) days of its receipt or such longer time as the Program Manager may deem necessary. Upon completing this review, the Program Manager shall notify the applicant in writing whether the application is complete or incomplete. The Program Manager may, at his or her discretion, request in writing additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete if the applicant has complied with all application requirements.
- (d) The applicant shall provide additional requested information within the period identified in the request. If the applicant fails to provide the information or refuses to correct stated deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the Waste Management Act and these Regulations.
- (e) If the Program Manager decides that a site visit is necessary for any reason in conjunction with processing an application, the applicant shall be notified and a date for the visit shall be scheduled.

203. Financial Assurance and Disclosure by Applicant

- (a) Unless a waste facility is of a type exempt by regulation from financial assurance requirements, every permit application must include a showing that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the Waste Management Act and regulations promulgated under the WMA, including these Regulations and including requirements for closure and post-closure care.
- (b) Financial responsibility may be demonstrated by any one, or combination of, the following: cash, trust fund, corporate financial test, insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. The applicant may provide the same financial assurance used to satisfy federal requirements under RCRA and/or CERCLA in order to satisfy the requirements of this section in whole or in

part, revised as appropriate to provide for the Tribes as beneficiary.

- (c) Any method of financial responsibility used to satisfy this requirement shall be maintained in the amount required in the permit. Factors such as inflation rates and changes in operation may be considered when setting the amount. The Program may seek guidance and expert advice in approving or modifying the amount of financial responsibility, and shall consider the following:
- (1) Amount and type of waste involved;
 - (2) Danger and potential damage to Tribal or private property near the facility;
 - (3) Potential for the waste facility to endanger the public health and safety, natural or cultural resources, or the environment;
 - (4) Estimated costs for properly closing the facility and costs associated with the post-closure care period; and
 - (5) Estimated costs of corrective action.

CHAPTER 3
PERMIT ISSUANCE, DENIAL, AND RENEWAL

301. Process for Permit Issuance or Denial

- (a) The Program shall issue a final determination on issuance or denial of a permit no later than 180 days after finding a permit application to be complete or after receiving all additional information requested under § 202. Within this period, the Program Manager shall:
 - (1) Publish notice of the Program's intended decision on the permit application, including notice of a draft permit, if any, in a local newspaper of general circulation on the Reservation and request written comments on its intended course of action within 30 days of the date of publication, as described more fully in § 304;
 - (2) Transmit in writing notice of the Program's intended decision to each Tribal Department with an interest in the proposed permittee's activities;
 - (3) If a hearing is requested or if the Program finds in its discretion that a hearing is advisable, hold an informal public hearing with an opportunity to receive written and oral comments and provide reasonable notice to all interested persons, including the permit applicant, of the place, date and time of the hearing, as described more fully in § 304;
 - (4) Provide a brief overview of the application and receive both written and oral comments at the public hearing regarding the application, as described more fully in § 304;
 - (5) Consider any significant comments received before issuing its final decision regarding the permit application and provide a written response to those comments, as described more fully in § 304; and
 - (6) Provide notice of its final decision in the Sho-Ban News or, if that newspaper should cease to exist, other newspaper of general circulation on the Reservation.

302. Draft Permits

- (a) Upon review of a completed application, the Program Manager shall decide whether to prepare a draft permit or to deny the application.
- (b) If the Program Manager decides to deny the permit application, then he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the Program Manager's final decision is that the initial decision

to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

- (c) If the Program Manager decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:
 - (1) All permit conditions required by the Waste Management Act and implementing regulations;
 - (2) All compliance schedules authorized by the Waste Management Act and implementing regulations;
 - (3) All monitoring requirements specified by the Waste Management Act and implementing regulations; and
 - (4) All other information required to be in the permit under the Waste Management Act and implementing regulations.
- (d) All draft permits prepared under this section shall be accompanied by a fact sheet when required by § 303 and shall be based on the administrative record. Pursuant to § 304, notice of the draft permit shall be given to the public and the draft permit shall be made available for public comment. The Program Manager shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments, in accordance with these Regulations.

303. Fact Sheet

- (a) A fact sheet shall be prepared for every draft permit if the Program Manager finds that the permit application is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Program Manager shall send this fact sheet to the applicant and, on request, to any other person.
- (b) The fact sheet shall include, if applicable:
 - (1) A brief description of the type of facility or activity that is the subject of the draft permit;
 - (2) The type and quantity of waste that is proposed to be or is being treated, stored, or disposed of;
 - (3) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

- (4) Reasons why any requested variances from required standards do or do not appear justified;
- (5) A description of the procedures for reaching a final decision on the draft permits, including:
 - (A) The beginning and ending dates of the comment period and the address where comments will be received;
 - (B) Procedures for requesting a hearing and the nature of that hearing; and
 - (C) Any other procedures by which the public may participate in the final decision;
- (6) Name and telephone number of a person to contact for additional information;
- (7) When appropriate, a sketch or detailed description of the location of the regulated activity described in the application; and
- (8) Any other information required to be in the fact sheet under tribal law.

304. Public Notice of Permit Actions and Public Comment Period

(a) Public Notice Required

- (1) The Program Manager shall give public notice that the following actions have occurred:
 - (A) A draft permit has been prepared;
 - (B) When no draft permit is required, a permit application has been received; or
 - (C) A hearing has been scheduled.
- (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Chapter 5. Written notice of the denial shall be given to the requester and to the applicant or permittee.
- (3) No public notice is required for purely administrative modifications to a permit, such as changes to contact information, correction of typographical errors, and similar modifications as determined by the Program Manager.
- (4) Public notices may describe more than one permit or permit action.

(b) Timing

- (1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, shall allow thirty (30) days for public comment. This comment period may be reopened pursuant to § 308 if the Program Manager determines that issuance of the permit is reasonably likely to be contested and that applying the requirements of § 308 will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.
 - (2) Public notice of a public hearing shall be given at least twenty (20) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.
- (c) Methods. The public notice required under subsection (a) shall be given by each of the following methods:
- (1) A notice by mail to each of the persons listed below. Persons otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits by expressly advising the Program Manager in writing.
 - (A) The applicant;
 - (B) Federal and Shoshone-Bannock tribal agencies with jurisdiction over fish and wildlife resources and historic preservation, and other appropriate agencies of affected states or Tribes, including the State or Tribal Historic Preservation Officer;
 - (C) Any other agency that the Program Manager knows has issued or is required to issue a permit for the same facility or activity or otherwise has an interest in the proposed permittee's activities; and
 - (D) Any user identified in the permit application.
 - (2) A notice in a daily or weekly newspaper within the area affected by the facility or activity;
 - (3) A notice broadcast over local radio stations in English, Shoshoni, and Bannock; and
 - (4) Any other method reasonably determined to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation, if deemed advisable by the Program Manager.
- (d) Contents

- (1) All public notices issued under this part shall contain the following minimum information:
 - (A) Name and address of the office processing the permit action for which notice is being given;
 - (B) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - (C) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
 - (D) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, the fact sheet, and the application;
 - (E) A brief description of the comment procedures and the date, time, and place of any hearing that will be held (including a statement of procedures to request a hearing, unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;
 - (F) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record, except data found to be confidential business information pursuant to applicable law;
 - (G) A map or description of the permit area;
 - (H) Any additional information required by the Waste Management Act and implementing regulations; and
 - (I) Any additional information that the Program Manager considers necessary or appropriate.
- (2) Public notices for hearings. In addition to the contents of a general public notice described in subsection (d) (1), the public notice for a permit hearing shall contain the following information:
 - (A) Reference to the date of previous public notices relating to the permit; and
 - (B) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (3) In addition to the general public notice described in subsection (d) (1), all persons identified in subsection (c) (1) shall be mailed a copy of the fact sheet and the draft permit. When no draft permit is required, a copy of the permit application shall be made available for copying. Upon request, any person shall be provided a copy of the fact sheet and the draft permit, if any, and a copy of the permit application, if any, shall be available for copying.

- (4) The Regional Administrator shall be mailed a copy of the notice and the permit application.

305. Public Comments and Requests for Public Hearings

- (a) During the public comment period for a draft permit, any interested person may submit written comments on the draft permit and may request a public hearing if one has not already been scheduled.
- (b) A request for a public hearing shall be in writing and shall include the following information:
 - (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; and
 - (2) A brief statement of the interest of the person making the request in the permit action.
- (c) All significant public comments received during the public comment period, including at any public hearing and during any reopening of the public comment period, shall be considered in making the final decision and shall be answered as provided in § 309(b).

306. Public Hearings

- (a) The Program Manager shall hold a public hearing no sooner than twenty (20) days after publication of the hearing notice or when he or she receives a request for a hearing pursuant to § 305. The Program Manager also may hold a public hearing at his or her discretion, for instance whenever a hearing might clarify one or more issues involved in the permit decision. No public hearing is required for a denial of a request for modification, revocation and reissuance, or termination of a permit.
- (b) The Program Manager shall designate a Hearing Moderator for the public hearing. The Hearing Moderator shall be responsible for the orderly conduct of the public hearing. Nothing in these Regulations shall empower the Hearing Moderator to make any findings of fact, conclusions of law, or recommendations on permit issuance or denial. The Program Manager, a member of the Program staff, or any individual may serve as a Hearing Moderator, so long as the Hearing Moderator is not the applicant or an officer or employee of the applicant and does not have a financial interest or other conflict of interest, pursuant to § 105, in the outcome of the permit application.
- (c) Hearings shall be held at a time and place which facilitates attendance by interested persons and the general public. Public notice of the hearing shall be given as specified in § 304.

- (d) The Program Manager, a member of the Program staff, or the Hearing Moderator shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public.
- (e) Any person may submit oral or written statements and information concerning the draft permit in English, Shoshoni or Bannock. The Hearing Moderator may set reasonable limits upon the time allowed for oral statements. The Program Manager shall allow the submission of statements in writing at the hearing, but the Program Manager or Hearing Moderator shall not require a written statement in lieu of or as a condition for making an oral statement. The public comment period under § 304 shall automatically be extended to the close of any public hearing under this section. The Hearing Moderator may also extend the comment period by so stating at the hearing.
- (f) The Hearing Moderator and the Program shall make reasonable efforts to accommodate requests for oral translations, if necessary, during the hearing.
- (g) A tape recording or written transcript shall be made of the hearing. At the conclusion of the hearing, the Hearing Moderator shall forward to the Program Manager the record of the hearing, including the tape recording or written transcript and any materials submitted at the hearing. The hearing record shall be made available to the public.

307. Obligation to Raise Issues and Provide Information during the Public Comment Period

- (a) All persons, including applicants, who believe that a permit application should be granted or denied, or that any condition of a draft permit is inappropriate or inadequate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period.
- (b) All supporting materials shall be submitted in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of federal or tribal statutes or regulations, U.S. EPA's or the Program Manager's documents of general applicability or other generally available reference materials.
- (c) The Program may grant additional time to comment to any person to the extent that the person desiring to comment demonstrates need for such time.

308. Reopening of the Public Comment Period or Issuance of a New Draft Permit

- (a) Whenever any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning the draft permit or whenever the Program becomes aware of significant new information, the Program Manager may take one or more of the following actions:
 - (1) Prepare a new draft permit, appropriately modified, and provide public notice and opportunity to comment on the new draft permit;
 - (2) Prepare a revised fact sheet, and reopen the public comment period under this section; or
 - (3) Reopen or extend the comment period under this section to give interested persons an opportunity to comment on the information or arguments submitted.
- (b) If the Program Manager reopens the public comment period pursuant to subsection (a)(2) or (3), the scope of the reopening shall be limited to the substantial new questions or significant new information that caused the reopening. All persons, including applicants, wanting to comment on an issue within the scope of the reopening must submit all reasonably available legal and factual grounds supporting their position, including all supporting material, by a date set by the Program Manager no later than thirty (30) days after public notice under subsection (c) of this section. Thereafter, any person may file a written response to the material filed by any other person, by a date set by the Program Manager no sooner than twenty (20) days after the date set for filing of the material. Persons desiring to comment may request longer comment periods and a longer comment period may be granted to the extent that the Program Manager finds it necessary to effect the purpose of the reopening.
- (c) Public notice of any action taken by the Program Manager pursuant to subsection (a) shall be issued under § 304. In addition to the requirements of § 304, the public notice for any action taken pursuant to subsection (a)(2) or (3) shall state the scope of the reopening.

309. Issuance and Effective Date of Permit

- (a) After the close of the public comment period on a draft permit under § 304, the Program Manger shall issue a final permit decision within a reasonable amount of time, not to exceed one hundred eighty (180) days after receipt of the complete permit application, pursuant to WMA § 301(C) and § 301 of these Regulations. The Program Manager shall notify the applicant and each person who submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, renew,

modify, revoke and reissue, or terminate a permit.

- (b) Response to Comments. At the time that any final permit decision is issued, the Program Manager shall issue a response to comments. The Program Manager shall fully consider all significant comments resulting from the public comment period, including any hearing, conducted under these Regulations. The response shall:
 - (1) Specify which provisions, if any; of the draft permit have been changed in the final permit decision and the reasons for the change;
 - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing; and
 - (3) Be available to the public.
- (c) Pursuant to WMA § 301(L), each permit issued under these Regulations shall require the permittee to certify, no less than annually, that the permittee:
 - (1) Has protocols in place to reduce the volume or quantity and toxicity of waste to the degree determined by the permittee to be economically practicable; and
 - (2) Utilizes current methodology for the treatment, storage or disposal of waste that minimizes the present and future threat to human health, natural and cultural resources, and the environment.
- (d) A final permit decision shall become effective thirty (30) days after the service of notice of the decision unless:
 - (1) A later effective date is specified in the decision; or
 - (2) If no comments requested a change in the draft permit, the Program Manager may make the permit effective immediately upon issuance.
- (e) A final permit decision is subject to judicial review pursuant to WMA § 902.

310. Permit Issuance Criteria

- (a) Pursuant to WMA § 301(D), the Program shall issue a permit only upon a showing by the applicant of the following:
 - (1) Ability to achieve compliance under the permit for the duration of the permit;

- (2) Treatment, storage, or disposal of waste shall not pose a significant threat to human health, natural or cultural resources, or the environment; and
 - (3) Requirements for granting a permit set forth in the Waste Management Act and these Regulations have been properly addressed by the applicant.
- (b) Pursuant to WMA § 301(J), the Program may consider any improvements in relevant technology and any applicable federal or tribal regulations in its review of an application for a permit or permit renewal.

311. Permit Term

Any permit issued under the Waste Management Act shall be for a fixed term, not to exceed five (5) years. The Program shall review the permit at a maximum interval of three years after the date of issuance or re-issuance, and shall modify such permit as necessary to assure that the permittee continues to comply with the Waste Management Act and these Regulations. If any changes or modifications are made to the facility, the permit must be modified in accordance with Chapter 5.

312. Permit Renewal

- (a) If a permittee wishes to renew a permit, no later than six (6) months before the expiration of the existing permit the permittee shall file an application for renewal of the permit with the Program.
- (b) The application for renewal shall comply with §§ 201 - 203.
- (c) Public notice for an application for renewal shall include, at a minimum, publication pursuant to § 304(c)(2). If there is no change in any aspect of the facility, the Program Manager is not required to hold a public hearing unless one is requested.
- (d) Upon the review of the application and in compliance with the permit issuance criteria in § 402, the Program Manager shall make a determination whether to renew the permit.

313. Consolidation of Permit Processing

- (a) Whenever a facility or activity requires more than one permit, processing of two or more applications for those permits may be consolidated. The first step in consolidation is to prepare each draft permit at the same time.
- (b) Whenever draft permits are prepared at the same time, fact sheets (if applicable), administrative records, public comment periods, and any public hearings on those permits should also be consolidated. The final permits may be issued together. They need not be issued together if, in the judgment of the Program Manager, joint processing would result in unreasonable delay in the issuance of one or more

permits.

- (c) Whenever an existing facility or activity requires additional permits, the Program Manager may coordinate the expiration dates of the existing permits so that all permits expire simultaneously. Processing of the subsequent applications for renewal permits may then be consolidated. In making the decision whether to coordinate the expiration dates of the existing permits, the Program Manager may consider whether the burden on the permittee's environmental quality staff and the staff of the Program maybe more strained if all of the permits for a facility expire at the same time rather than having them considered on a staggered schedule.
 - (d) The Program Manager may consult with the Regional Administrator to consolidate draft permits whenever a facility or activity requires permits from both U.S. EPA and the Program.
314. Prohibition on Facilities near Commonly Frequented or Environmentally or Culturally Sensitive Places
- (a) The Program shall prohibit the issuance of a permit for a new waste facility or the area expansion of such a facility if the boundary of the site is to be located within one mile of an established residence; school; day care center; community district center; surface water body, spring, or well used for drinking water supply; Tribal cultural resources; Tribal burial site; or public park.
 - (b) The Program Manager shall adequately document the existence of such places so that their distance from a proposed waste facility may be determined.

CHAPTER 4
PERMIT MODIFICATION, REVOCATION AND REISSUANCE,
TERMINATION AND TRANSFER

401. General Provisions for Permit Modification, Revocation and Reissuance, or Termination
- (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Program Manager's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in the Waste Management Act and these Regulations. All requests shall be in writing and shall contain facts or reasons supporting the request.
 - (b) If the Program Manager decides that the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. They are subject to judicial review pursuant to § 702.
 - (c) A permittee seeking a "substantial change" in ownership, design, or operation at a waste facility must comply with the permit modification or transfer provisions in §§ 402 and 404, as the case may be, in order to obtain Program approval for the change.
402. Permit Modification or Revocation and Reissuance
- (a) If a permittee wishes to modify its permit, other than to make a minor modification, it shall file an application for modification with the Program and shall refrain from modifying his or her operations until obtaining the necessary approval from the Program. The application for modification shall comply with §§ 201-202, including the requirement of an Environmental Site Assessment as described in §202(a) (3) unless exempt pursuant to § 202(a) (4). The application for modification also shall contain a detailed description of the proposed modification and preliminary specifications and architectural drawings where appropriate. In the case of a modified permit, the Program Manager may allow submission of an updated application addressing these requirements. In the case of revoked and reissued permits, the Program Manager shall require the submission of a new application.
 - (b) If the Program Manager tentatively decides to modify or revoke and reissue a permit, he or she shall prepare a draft permit under § 302 incorporating the proposed changes. The Program Manager shall follow the permit issuance procedures in Chapter 3 except that, in the case of a permit modification, public notice and comment shall be limited to the modification. Permit modifications and revoked and reissued permits must satisfy the permit issuance criteria in § 310.

- (c) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
- (d) If warranted, the Program Manager shall have the authority to impose a compliance schedule in any permit, to provide a time period not to exceed one year for the permit holder to achieve full compliance with the terms and conditions of the permit. If the permittee fails to achieve compliance within the specified period, the Program may revoke, suspend, or modify the permit.
- (e) Nothing in these Regulations shall preclude the Program Manager from reviewing and modifying a permit at any time during its term to meet the objectives of the Waste Management Act or these Regulations.

403. Permit Termination

If the Program Manager tentatively decides to terminate a permit, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit that follows the same procedures as any draft permit prepared under § 302.

404. Permit Transfer

- (a) No permit issued under the authority of the Waste Management Act shall be transferred by the permittee to any other person, except in conformity with the requirements of this section.
- (b) Prior to any transfer, a joint application of the transferring permittee and the proposed permittee shall be filed with the Program on a form provided by the Program. The form must contain the notarized signatures of both the transferring permittee and the proposed permittee.
- (c) The Program shall approve the transfer of a permit unless it determines that the proposed permittee has not shown that it has the administrative, technical, or financial capability to properly satisfy the requirements and conditions of the permit. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit. Information considered by the Program in making this determination shall become part of the administrative record.
- (d) The Program shall render its decision within ninety (90) days after receiving a properly completed permit transfer application. The Program may toll the time for making a determination on the transfer by notifying both the permittee and the

proposed permittee that additional information is required to adequately review the transfer request. If the Program fails to approve or deny the transfer within ninety (90) days of receipt of either a complete permit transfer application or the additional requested information, whichever is later, the applicants may petition the Tribal Court for a writ of mandamus to compel the Program to act. The Program shall follow the notice and comment procedures set forth in §§ 304-309 in making its decision.

- (e) If the Program denies the transfer, it shall provide a written decision to the applicants, including notice of a right to administrative review pursuant to Chapter 9 of the WMA.
- (f) If the Program grants the transfer, the Program shall issue a new permit to the proposed permittee, effective upon the date of conveyance of the facility.
- (g) Until the effective date of the transferred permit, the transferring permittee shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.

CHAPTER 5
SITING CERTIFICATION, CLOSURE, AND POST CLOSURE PERMITS
FOR WASTE DISPOSAL FACILITIES

501. Applicability and Scope

This Chapter contains requirements for waste disposal facilities only.

502. Siting Certificate Required

- (a) In addition to obtaining a permit pursuant to WMA § 301 and these Regulations, the owner or operator of a waste disposal facility must obtain a Siting certificate prior to operating the facility, pursuant to Chapter 4 of the WMA. The procedure for obtaining a Siting certificate is set forth therein. Public notice and comment shall be provided pursuant to the provisions of §§ 304-308 and 309(a)-(b), except that the timing provided in the WMA shall supersede any inconsistent timing specified in these Regulations.
- (b) The provisions in §§ 304-308 and 309(a)-(b) also shall apply to a revocation or suspension of a Siting certificate pursuant to WMA § 402(B) and a modification to a Siting certificate pursuant to WMA § 407.
- (c) The Program Manager's final decision on a Siting certificate is effective immediately upon service of notice of the decision unless specified otherwise in the decision; however, pursuant to WMA § 403(B) the Siting certificate itself shall not become effective until the certified facility has received a permit. A final decision on a Siting certificate is subject to judicial review pursuant to WMA § 902, provided there has been exhaustion of the procedures set forth in WMA § 401 and in §§ 304-308 of these Regulations.
- (d) Fees for Siting certificates and for modifications to Siting certificates to authorize substantial changes to waste disposal facilities are set forth in Chapter 6 of these Regulations.
- (e) An operator of an existing waste disposal facility who has applied for a Siting Certificate within the period required by WMA § 401 may continue to operate pursuant to the application pending a final determination by the Program on the application, provided there has been compliance with the requirement to obtain a permit.

503. Closure Permit

- (a) Before a waste disposal site is closed, partially or completely, the permittee must obtain a closure permit from the Program. A closure permit issued under this section must be maintained until the end of the post-closure period established by

Regulation.

- (b) In order to obtain a closure permit the permittee must provide a closure plan, a post-closure plan, and a contingency plan, if applicable, to the Program, as provided in WMA § 410. Any closure permit issued by the Program shall be issued according to the procedures in Chapters 2-3 of these Regulations.

504. Post-closure Permit

- (a) The permittee must obtain a post-closure permit from the Program. A post-closure permit issued under this section must be maintained until the end of the post-closure period established by Regulation.
- (b) In order to obtain a post-closure permit, the owner and/or operator of a waste disposal facility must submit a written post-closure plan and a contingent post-closure plan for certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the wastes at closure, as provided in WMA § 411. Any post-closure permit issued by the Program shall be issued according to the procedures in Chapters 2-3 of these Regulations.

CHAPTER 6 FEES

601. Applicability, Scope, and General Provisions

- (a) Pursuant to WMA § 211(E), the Program is assessing four types of fees under these Regulations:
 - (1) Permit application fees, including fees for applications for initial permits, permit renewals, permit modifications, and permit transfers;
 - (2) Siting fees, which must be submitted by waste disposal facilities to obtain Siting certificates;
 - (3) Waste fees, which shall apply to all waste facilities requiring permits under the Waste Management Act and these Regulations; and
 - (4) Substantial change fees for waste disposal facilities.
- (b) The fees authorized in these Regulations are intended to cover the costs of administering the Shoshone-Bannock Environmental Waste Management Program, including costs of personnel, equipment, supplies, sampling, enforcement, clean-up and other administrative costs the Tribes incur to implement and administer the Program. These fees will be deposited in the Waste Management Fund and Environmental Protection Trust Fund established by WMA §§ 203 and 205, respectively.
- (c) The Program shall evaluate these fees on an annual basis and shall adjust the fees as necessary to meet Program costs of implementing the WMA. Any adjustment to the fees shall be deemed a revision to these Regulations and shall comply with WMA § 901 and the following rulemaking procedures:
 - (1) The Program shall provide written notice of its proposed revised fee regulations in a local newspaper of general circulation on the Reservation and request any written comments on its intended course of action within no fewer than thirty (30) days of the date of publication. Notice shall also be provided by mail to all existing permittees and permit applicants.
 - (2) If a hearing is requested or if the Program determines, in its discretion, that holding a hearing would be in the public interest, the Program shall hold an informal public hearing with an opportunity to receive written and oral comments on the proposed revised regulations. The Program shall provide at least twenty (20) days notice to all interested persons, including all permittee's and permit applicants, of the place, date and time of the hearing. The public hearing shall be conducted as provided in § 306.

- (3) After the close of the public comment period, the Program shall finalize the proposed fee regulations. In doing so, the Program shall consider all significant comments received and provide a summary of and a response to such comments to the Fort Hall Business Council as part of its presentation on the proposed regulations.
- (4) The proposed regulations shall become effective upon the approval of the Fort Hall Business Council, and shall be issued together with the response to comments.

602. Permit Application Fees

The following fees shall be submitted with the permit applications indicated:

- (a) Initial permit application - \$7,500
- (b) Permit renewal application - \$ 5,000
- (c) Application for permit modification or closure permit - \$ 2,500
- (d) Permit transfer application - \$ 1,000

603. Siting Fee

- (a) Every application for a Siting certificate required by Chapter 4 of the Waste Management Act shall be accompanied by a siting fee.
- (b) The siting fee for hazardous waste and mixed waste disposal facilities shall be based upon the projected waste at the site (in gallons or tons) and shall be determined by the following table:

| Site Size | Category 1: Less than 10,000 gallons or Less than 20 tons | Category 2: 10,000-20,000 gallons or 20-80 tons | Category 3: Over 20,000 gallons or over 80 tons |
|---------------------------|--|--|--|
| Less than ½ acre | \$3, 000 | \$4,000 | \$7,500 |
| ½ acre - less than 1 acre | \$4,000 | \$5,000 | \$7,500 |
| 1 acre or more | \$5,000 | \$6,000 | \$7,500 |

- (c) The siting fee for nonhazardous solid waste disposal facilities shall be based on the projected waste at the site (in tons) and shall be as follows:

| Site Size | Category 1: Less than 20 tons | Category 2: 20-100 tons | Category 3: Over 100 tons |
|--------------------|--------------------------------------|--------------------------------|----------------------------------|
| Less than 5 acres | \$3,500 | \$4,500 | \$5,500 |
| 5 acres - 50 acres | \$4,500 | \$5,500 | \$6,500 |
| More than 50 acres | \$5,500 | \$6,500 | \$7,500 |

- (d) The facility shall submit to the Program, together with the siting fee, information supporting the facility's estimate of the projected amount of waste received at the site each year.

604. Waste Fee

- (a) Pursuant to WMA § 211(E), all waste facilities requiring permits under the Waste Management Act shall pay waste fees to the Program.
- (b) The waste fee shall be paid annually, on the 15th of the month following the month that the fee accrues, and shall be based on the amount of waste treated, stored, or disposed of at the facility.
- (c) The waste fee for hazardous waste and mixed waste shall be determined by the following table:

| Amount of Hazardous/Mixed Waste | Fee Amount |
|--|-------------------|
| Less than 1,000 tons | \$28/ton |
| Equal to or greater than 1,000 tons but Less than 12,500 tons | \$10/ton |
| Equal to or greater than 12,500 tons but less than 25,000 tons | \$5/ton |
| Equal to or greater than 25,000 tons | \$2.50/ton |

- (d) The waste fee for nonhazardous solid waste shall be determined by the following table:

| Type of Solid Waste | Fee Amount |
|--|-------------------|
| Municipal waste and municipal incinerator ash | \$0.13/ton |
| If disposed of in cells exclusively designated for type of waste being disposed: construction or demolition waste, yard waste, dead animals, and waste tires | \$0.50/ton |
| All other nonhazardous solid waste | \$2.50/ton |

- (e) The facility shall submit to the Program, together with the waste fee, information that verifies the amount of waste treated, stored, or disposed of and the fee calculation that was made.

605. Substantial Change Fee

- (a) In the event an application is filed for approval of a substantial change to the design, construction, or operation of a waste disposal facility pursuant to WMA § 407, the permittee shall include with its application for a modification to its Siting certificate the fee required by WMA § 407(B).
- (b) The substantial change fee for both hazardous and nonhazardous solid waste shall vary depending upon the size of the facility and the nature of the proposed modification. If substantial changes are proposed to both design or operation and construction, the higher of the two fees shall apply.
- (c) The substantial change fee for hazardous and mixed waste shall be determined by the following table:

| Site Size | Substantial Change to Design or Operation | Substantial Change to Construction |
|-----------------------------------|--|---|
| Less than ½ acre | | |
| Category 1 | \$1,000 | \$1,500 |
| Category 2 | \$1,500 | \$2,000 |
| Category 3 | \$3,250 | \$3,750 |
| ½ acre to less than 1 acre | | |
| Category 1 | \$1,500 | \$2,000 |
| Category 2 | \$2,000 | \$2,500 |
| Category 3 | \$3,250 | \$3,750 |
| 1 acre or more | | |
| Category 1 | \$2,000 | \$2,500 |
| Category 2 | \$2,500 | \$3,000 |
| Category 3 | \$3,250 | \$3,750 |

- (d) The substantial change fee for nonhazardous solid waste shall be determined by the following table:

| Site Size | Substantial Change to Design or Operation | Substantial Change to Construction |
|---------------------------|--|---|
| Less than 5 acres | | |
| Category 1 | \$1,250 | \$1,750 |
| Category 2 | \$1,750 | \$2,250 |
| Category 3 | \$2,250 | \$2,750 |
| 5 acres - 50 acres | | |
| Category 1 | \$1,750 | \$2,250 |
| Category 2 | \$2,250 | \$2,750 |
| Category 3 | \$2,750 | \$3,250 |
| More than 50 acres | | |
| Category 1 | \$2,250 | \$2,750 |
| Category 2 | \$2,750 | \$3,250 |
| Category 3 | \$3,250 | \$3,750 |

606. Consequences of Failure to Pay Fees

- (a) Failure of a permittee to pay a required fee shall constitute grounds for suspension or revocation of a permit or Siting certificate, in addition to any civil or criminal penalties or other remedies set forth in the Waste Management Act.
- (b) Failure to pay a fee required by §§ 602-603 and § 605 shall render the application for the relevant permit, Siting certificate, or substantial change incomplete.
- (c) If a waste fee is not paid in full on or before the due date, a penalty of 10% of the total annual fee owed will be assessed. The Program shall send a written notice of payment past due to each facility fourteen (14) days after the due date.
 - (1) If the facility does not make payment including the penalty assessment within fourteen (14) days of receiving the notice, the Program may take action in tribal court pursuant to the Waste Management Act.
 - (2) The Program may continue to assess the 10% penalty every thirty (30) days thereafter until such time as payment is paid in full or the Program and facility have agreed upon a payment schedule. Such payment schedule shall be in writing and shall be legally enforceable.

CHAPTER 7
ADMINISTRATIVE RECORD AND JUDICIAL REVIEW

701. The Administrative Record

- (a) The Program Manager shall base all draft and final permit decisions on the administrative record, defined below.
 - (1) For draft permits, the administrative record shall consist of:
 - (A) The application and any supporting data furnished by the applicant;
 - (B) The draft permit or notice of intent to deny the application or to terminate the permit;
 - (C) The fact sheet;
 - (D) The public notice;
 - (E) All documents cited in the fact sheet; and
 - (F) Other documents contained in the supporting file for the draft permit.
 - (2) For final permits, the administrative record shall consist of:
 - (A) The administrative record for the draft permit, as described above;
 - (B) All comments received during the public comment period (including any extension or reopening of the period);
 - (C) The tape or transcript and notes of any hearings held and any written materials submitted at such hearings;
 - (D) The response to comments and any new material that the Program Manager references in the response to comments;
 - (E) Other documents contained in the supporting file for the permit; and
 - (F) The final permit.

Any additional documents required under this paragraph should be added to the record as soon as possible after their receipt or publication by the Program Manager. The record shall be complete on the date the final permit is issued.

- (3) Material readily available at the applicable program office or published material that is generally available and that is included in the administrative record under these provisions need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet or response to comments.
- (4) The administrative record shall be available for public inspection commencing no later than the date of the notice of the draft permit or final permit decision.

702. Judicial Review

- (a) Exhaustion. Any person challenging the issuance, denial, renewal, modification, revocation and reissuance, termination or reissuance of a permit or a Siting certificate must follow the procedures set forth in the Waste Management Act and these Regulations as a prerequisite to seeking judicial review of the final agency action.
- (b) Final agency action. For purposes of judicial review, final agency action occurs when the permit decision becomes effective pursuant to § 309(d) or § 401(b) or the Siting certificate becomes effective pursuant to § 502.
- (c) Filing the record. Within thirty (30) days following the date that a petition for judicial review is filed pursuant to the Waste Management Act and these Regulations, the Program Manager shall file in court a certified copy or certified index of the record on which the decision was based.
- (d) Judicial review of final agency action on a permit or Siting certificate shall be conducted pursuant to WMA § 902.