

TITLE 10. HEALTH, SAFETY, AND WELFARE

Chapter 10.6

SOLID WASTE

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10.6.1. Purpose, Policy, and Scope. This chapter has been established to protect the health, safety, and welfare of the residents and the natural resources of the Port Madison Indian Reservation and to provide the statutory basis for a coordinated program which addresses the accumulation, collection, and disposal of solid waste; resource recovery, recycling, and utilization of recyclable materials; and the creation and operation of disposal sites and transfer stations. The recognition of the importance of preventing pollution over attempting to clean up contaminated sites after the fact is an integral part of this chapter. Solid wastes covered under this chapter include bulk wastes, industrial wastes, infectious wastes, household hazardous wastes, food wastes, animal wastes, yard wastes, paper wastes, recyclables, and asbestos. Sewage and septic systems are not included in the scope of this chapter; however, the unauthorized dumping and disposal of sewage and gray water are within the scope of this chapter. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.2. Definitions. For the purpose of this chapter, words used in the present tense include the future; the singular number includes the plural; the masculine form includes the feminine; and the term "this chapter" includes all amendments hereafter made to this chapter. The definitions applicable to this chapter are:

(a) "Animal wastes" include solid and semisolid animal excrement and animal carcasses.

(b) "Asbestos wastes" are those that contain more than one percent (1%) asbestos by weight and that, by hand pressure, can be crumbled, pulverized, or reduced to powder when dry.

(c) "Bulk wastes" include but are not limited to construction debris; discarded residential, commercial, and industrial appliances; equipment and furniture; land-clearing debris; agricultural waste; and discarded, inoperable, and/or abandoned vehicles or vehicle parts and tires.

(d) "Closure" means those actions taken by the owner or operator of a solid waste site or facility to cease disposal operations and to ensure that all such facilities are closed in conformance with applicable regulations at the time of such closure and to prepare the site for the post-closure period.

(e) "Commercial" means activities of, in, or relating to commerce and/or activities related to a business, profession, or other endeavor having financial gain as an object.

(f) "Composting" means the controlled degradation of organic solid waste, yielding a product for use as a soil conditioner.

(g) "Director of natural resources department" means the Tribe's natural resources department director ("NRD director"), or his or her designee, who is the tribal staff person primarily responsible for the administration of this chapter.

(h) "Enforcement officer" means one or more of the following individuals: the Tribe's natural resources department director or his or her designee, health officer or his or her designee, or officer within the public safety department, all of whom are authorized to enforce this chapter.

(i) "Food wastes" means solid waste or waste, including bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers or products contaminated with food wastes, particles, or residues; and prepared vegetable and fruit food wastes or scraps.

(j) "Franchisee" means a franchise issued by the Tribal Council pursuant to this chapter to operate a waste or solid waste disposal site or resource recovery facility or collection service, including collection, transfer, and transport.

(k) "Garbage" includes animal and vegetable wastes resulting from the handling and preparation, cooking, and consumption of food; swill and carcasses of dead animals; and of such a character and proportion as to be capable of attracting or providing food for vectors.

(l) "Hazardous waste" means a waste or combination of wastes as identified in 40 CFR 261.3.

(m) "Health officer" means the tribal health officer or his or her designee, as authorized by the Tribe's human services director.

(n) "Household hazardous wastes" means solid or liquid wastes resulting from household use of cleaners, pesticides, herbicides, paints, paint-related products, and automotive products.

(o) "Incinerator" means any combustion device specifically designed for the reduction by burning of solid, semisolid, or liquid waste.

(p) "Industrial wastes" means waste or solid waste resulting from any process of industry or manufacturing or from the development or recovery of any natural resources.

(q) "Infectious wastes" includes cultures and stocks of infectious agents and any discarded materials whose agents come into contact with contaminated sharps (i.e., equipment that may cause punctures or cuts); pathological waste; human blood and blood products; surgical wastes; and other waste identified by a health officer as infectious waste.

(r) "Landfill" means a disposal site operated by means of compacting and covering waste or solid waste at specifically designated intervals but not necessarily each operating day.

(s) "Nuisance" means something that is annoying, unpleasant, or obnoxious.

(t) "Paper wastes" means solid wastes including newspaper, cardboard, and other paper products.

(u) "Person" means an individual firm, association, copartnership, government agency, industry, or any other entity whatsoever.

(v) "Recyclables" means any materials that can be collected and reused, including all paper wastes, certain plastics, glass bottles, and aluminum cans.

(w) "Refuse" means all solid waste except body wastes and includes garbage, ashes, glass, metal, paper, wood, and plastics.

(x) "Sewage" means any and all water that contains human or other waste products and includes gray water. "Gray water" means water that is contaminated as a result of being derived from stormwater runoff or household or business wastewater that does not include human waste but may include sanitized or filtered sewage that is acceptable for watering lawns, grass, forests, and/or gardens according to state and local health authorities.

(y) "Solid waste" means useless, unwanted, or discarded materials. "Solid waste" does not include sewage or hazardous materials as defined herein.

(z) "Transfer station" means a permanent, fixed supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste into a larger transfer vehicle for transport to a solid waste handling facility.

(aa) "Vector" means an organism capable of bearing, carrying, and/or transmitting microorganisms. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.3. Administration and Authority. Under the Constitution and Bylaws of the Suquamish Tribe of the Port Madison Indian Reservation, the Tribal Council has full authority to determine how solid waste will be handled on the reservation. The Suquamish tribal government is responsible for the health, safety, and welfare of the residents and the natural resources of the Port Madison Indian Reservation. The Suquamish Tribe is currently party to a memorandum of understanding (MOU) with the Kitsap County Board of Health. Nothing in this title is intended to amend or modify this agreement in any way.

(a) Tribal Council. The authority of the Suquamish Tribal Council as defined herein includes but is not limited to authorizing contracts for the collection, transportation, and disposal of solid wastes; setting rates and dates for service; proposing revisions or additions to this chapter as necessary; developing a solid waste management plan pursuant to 40 CFR 256 to provide for both the short-term and long-term solid waste needs of the Tribe; letting contracts for any necessary public education campaign related to solid waste issues; and seeking sources of funding.

(b) Enforcement Officers. Any of the following tribal staff persons are responsible for enforcing this chapter: director of the natural resources department; public safety department officers; and the health officer. The NRD director is the primary administrator of this chapter; however, any tribal enforcement officer is authorized to enforce the provisions of this chapter, including penalties for violations, as specified herein. The tribal public safety department officers, the director of the natural resources department, and the health officer have authority to conduct inspections on the Port Madison Indian Reservation to determine whether the requirements of this chapter are being fulfilled, to declare an area a health and safety hazard, to issue warnings to remove violating materials, to issue a notice of infraction, and to remove or abate nuisances as defined herein. The NRD director, health officer, and/or the public safety officers proposing to take action should give reasonable notice to the landowner and occupier(s) prior to entering the property.

When one tribal enforcement officer proposes to initiate any type of action to remedy a violation of this chapter, said enforcement officer needs to coordinate with the NRD director, health officer, and chief of police so that there is a unified and organized effort on such action.

(c) Appeals. Any appeals arising from a notice of infraction issued pursuant to this chapter shall first be submitted to the tribal hearing officer whose decision may be further appealed to and adjudicated in the Suquamish Tribal Court as set forth herein. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 2002-083, passed Aug. 12, 2002; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.4. Collection, Transportation, and Disposal of Solid Waste. Where not specifically stated in this chapter, the guidelines of 40 CFR 243 shall apply to the extent that they do not conflict with the provisions set forth in this chapter.

Customer Responsibilities

(a) Solid Waste Storage. The owner or person in charge of property or premises within the reservation and on trust lands whereon refuse, domestic or industrial garbage, or solid waste originates shall at all times keep such material in sufficient portable, leakproof, covered cans for the disposal of such material in accordance with the provisions of this section.

It shall be unlawful for any person, firm, or corporation to store or to permit the storage of refuse, domestic or industrial garbage, or solid waste on or about their premises or on premises owned or controlled by them unless such material is kept in portable, leakproof containers with proper labeling.

(b) Residential Transportation of Waste. Any resident or householder of the reservation may haul or recycle his or her own garbage, refuse, or solid waste and dispose of it in a lawful manner at a tribally-approved transfer station, landfill, or recycling station. The waste shall be transported in a manner that prevents leakage or scattering of the garbage or refuse.

(c) Solid Waste Containers. (1) A commercial waste container should be of such size, volume, and construction to allow a mechanical device to empty it into a collection vehicle.

(2) All residential waste shall be placed in a watertight, galvanized metal or plastic container.

(3) No person shall place material in or remove material from a solid waste collection container without permission of the owner of the container or the Tribe.

(d) Recyclable Materials. Residents should segregate recyclable materials from nonrecyclable materials and place the recyclable materials in appropriately marked containers at the franchisee's facility. Recyclables may also be given to nonprofit agencies. Unless otherwise specified by the Tribal Council or its designee, recyclables should be segregated as follows: aluminum and tin; glass (all colors); PET plastic; newspaper; mixed paper; and cardboard.

(e) Household Hazardous Wastes. Residents should deposit any residual household hazardous wastes, including used motor oil, in a receptacle that prevents leakage or scattering. Household hazardous waste shall not be disposed into a sewer system or on-site sewage system; be poured onto the ground or down a storm drain; be discarded along the road or other locations; have product labels removed; be removed from their original containers for storage or future use; or be refilled using the same container.

(f) Hazardous Wastes. Persons shall store and deposit hazardous wastes in appropriate labeled and leakproof receptacles. Persons shall not deposit any hazardous waste into a sewer system or on-site sewage system; pour it onto the ground or down a storm drain; discard it along the road or other locations; remove product labels; remove it from the original containers for storage or future use; or refill it using the same container.

(g) Infectious Wastes. Persons providing health services on the reservation shall follow requirements for the disposal of infectious wastes according to this chapter and 40 CFR 259 up to the time of collection.

(1) Infectious waste shall be separated from other wastes at the point of origin. Infectious waste, except for sharps (i.e., needles, razors, etc.), shall be contained in disposable, leakproof, red plastic bags with a minimum thickness of two (2) millimeters and sufficient strength to preclude ripping, tearing, or bursting under normal conditions of use. The bags shall be appropriately labeled as containing infectious waste. Sharps must be contained in leakproof, rigid, puncture-resistant, break-resistant, labeled containers with lids.

(2) Infectious waste shall be treated prior to disposal by one or more of the following methods: steam sterilization, incineration, or other treatment/disposal methods approved in writing by the tribal health officer.

(3) The landfill that is to accept treated sharps waste should be notified prior to transport of the waste, so they can follow appropriate procedures for the disposal of such wastes.

(h) Stored or Abandoned Vehicles. (1) Owners of vehicles that are not operational for a period of one (1) year or which pose a hazard to the community shall arrange for sale of the vehicle, place the vehicle in a closed garage, or transport the vehicle to a junkyard licensed to accept vehicles.

(2) The chief of police has the authority to obtain the title to any abandoned vehicle and to remove such vehicle from the reservation at the owner's expense.

(3) If the owner(s) of an abandoned vehicle cannot be located or the owner does not surrender the title, the chief of police should post reasonable

notice that the abandoned vehicle will be removed from the reservation at the owner's expense if the owner does not respond within fifteen (15) days of posting the removal notice.

(4) Residents who can demonstrate financial hardship or certify by an affidavit that they are under a financial hardship may petition the chief of police for relief from the requirements of expenses set forth in this section. For purposes of this chapter, "financial hardship" means the total household income where the resident resides is at or below the poverty level for this region, as determined by the U.S. government agency responsible for providing such information.

(i) Bulk Wastes. The owner or lessee is responsible for transporting bulk wastes to an acceptable disposal site if such service is not provided by the franchisee. The owner should make every effort to reuse or recycle bulk waste prior to disposal.

(j) Construction and Demolition Wastes. (1) Construction-related materials that do not contain asbestos should be separated into uncontaminated combustible materials and other waste for collection or hauling to an approved disposal site.

(2) Construction and demolition wastes are a subset of bulk waste and are defined as solid waste, largely immobile, and resulting from the demolition or razing of buildings, roads, and other manmade structures. Demolition waste consists of but is not limited to concrete debris, bituminous concrete, wood and masonry, composition roofing and roofing paper, steel and minor amounts of other metals like copper, plaster (i.e., sheetrock or plasterboard), or any material other than wood that is likely to produce gases or a leachate during the decomposition process.

(3) Asbestos waste is not demolition waste.

(k) Asbestos Wastes. Persons removing waste material containing asbestos shall notify the health officer prior to removal and disposal. Asbestos can only be removed by a federally certified or state-certified contractor. Asbestos can only be removed in accordance with the most current federal or state requirements, whichever is more stringent.

(l) Burning. Open burning of solid waste is prohibited unless authorized by a permit issued by the Tribe's natural resources department. A permit under this section may only be issued for the infrequent burning of agricultural wastes, silvicultural wastes, and forest practice wastes. The permit may limit the time and manner of burning depending on atmospheric conditions and to minimize air pollution.

(m) Composting. Port Madison Indian Reservation residents should be strongly encouraged to compost yard wastes and other organic materials on their property when

possible. Composting activities shall be maintained in a manner that does not create a nuisance or attract rodents or other vectors.

(n) Animal Wastes. Carcasses of small animals shall be buried within twenty-four (24) hours of death, and large carcasses shall be buried within three (3) days of death. Carcasses shall be buried at a minimum of three (3) feet and a maximum of six (6) feet in depth. Fin fish and shellfish carcasses shall be discarded by land burial or sea burial. The burial sites on land must be a minimum of three (3) feet deep and a maximum of six (6) feet deep, and when discarding by sea, sites shall be a minimum of three hundred (300) feet beyond the low mean tide line along all shorelines. The burial sites shall not be located within three hundred (300) feet of the high water line along all streams, creeks, drain ditches, and wetlands. Burial sites shall not be located within one hundred (100) feet of wellhead locations.

(o) Recycling and Reduction. Recycling and reduction of all waste on the reservation is strongly encouraged, including tribal staff's efforts to distribute information on recycling throughout the reservation. Preference should be given to franchisees offering a recycling program.

(p) Siting of New Landfills. Any new landfill sited on the reservation shall be considered a violation of this chapter and will not be permitted on the Port Madison Indian Reservation.

(q) Hazardous Waste Landfills. A hazardous landfill will be considered a violation of this chapter and will not be permitted on the Port Madison Indian Reservation.

(r) Existing Landfills. Any such landfill sited on the reservation should comply with all tribal solid waste permitting requirements and all parts of 40 CFR Parts 257 and 258 which are more stringent than tribal requirements.

(s) Infectious Waste Landfills. Any infectious waste landfill shall be considered a violation of this chapter and will not be permitted on the Port Madison Indian Reservation.

(t) Bulk Wastes Landfills. Bulk wastes landfills shall be considered a violation of this chapter and will not be permitted on the Port Madison Indian Reservation.

(u) Asbestos Waste Landfills. Asbestos waste landfills shall be considered a violation of this chapter and will not be permitted on the Port Madison Indian Reservation.

(v) Sewage. Sewage shall be disposed of in accordance with the Kitsap County and state legal requirements, which the Tribal Council hereby adopts as the Tribe's requirements for the purposes of this chapter. No person shall allow sewage to flow onto the ground or into any water body or wetland within or adjoining the reservation.

Gray water may be used for watering lawns or gardens provided that such proposed use satisfies all Kitsap County and state requirements. It is the responsibility of the party that proposes to reuse gray water to provide documentation showing that such reuse is consistent with the Kitsap County Health Department requirements. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.5. Nuisance. (a) **Unlawful Dumping.** It is unlawful and is a public nuisance for any person to dump, deposit, or permit the dumping or depositing of any solid waste or sewage onto or under the surface of the ground or into the waters within or adjoining the Port Madison Indian Reservation.

(b) **Name Appearing on Waste Material and Presumption.** Whenever solid waste is disposed of in a manner that is in violation of this chapter which waste contains one or more items bearing the name of one or more individuals, it shall be presumed that the individuals whose names appear on such items are responsible for the dumping or depositing of the waste. If solid waste contains one or more items bearing a common address of a household residence or business entity, it is presumed the owner or tenant located at said address is responsible for the dumping or depositing of the solid waste.

(c) **Lack of Identification.** When the enforcement officer investigates a case of unlawful dumping on tribal/government-owned lands and does not find adequate identification or other evidence of ownership, the responsibility for removal falls to the Tribe. For land within the reservation owned by tribal members, the enforcement officer may order the property owner or owners on the current property title to remove the solid waste. Where a violation of this chapter occurs on undivided trust lands and one or more allottees is living on or using the property, the solid waste violation and removal obligation will fall to only those allottees living on or using the property. Where a violation of this chapter occurs on undivided trust land on the reservation and no allottee is living on or using the property, the responsibility will fall to all allottees on the current property title ("Title Status Report") to remove the solid waste. Where a violation of this chapter occurs on reservation lands owned or occupied by non-Indians, the enforcement officer shall issue the complaint to the Kitsap County Board of Health for further action in accordance with the memorandum of understanding between the Suquamish Tribe and the Kitsap County Board of Health.

(d) **Accumulation of Solid Waste Prohibited.** (1) Except as provided in this chapter, no person shall store, collect, maintain, or display on private property waste or solid waste that is hazardous to the health, environment, and safety of the reservation residents or that creates offensive odors. Storage, collection, maintenance, or display of wastes or solid wastes in violation of this section shall be considered to be a public nuisance.

(2) Bulky, unsightly materials including but not limited to appliances, inoperable or abandoned vehicles or parts, building or demolition wastes, industrial wood wastes, land-clearing debris, discarded furniture and bedding, or

scrap metals shall not be accumulated or stored in a visible location for more than two (2) months.

(3) Household type rubbish, debris, or garbage shall not be accumulated or stored more than fourteen (14) days.

(e) Burning. The burning of refuse, liquid waste, solid waste, or waste which emits an unpleasant odor, in the sole opinion of a tribal enforcement officer, and for which a permit has not been issued by the Tribe's natural resources department shall be considered a nuisance and is prohibited. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.6. Enforcement. (a) Intergovernmental Agreements. It is the intent of the Tribe to prohibit all violations of this chapter including illegal dumping on the reservation. To assist the Tribe in the accomplishment of this objective, the Tribe may enter into intergovernmental agreements with states, counties, or municipalities.

(b) Complaints. A complaint alleging a violation of this chapter on the reservation may be filed with the Tribe's natural resources department or the Suquamish Police Department by any resident of the Port Madison Indian Reservation who is at least eighteen (18) years of age.

(c) Investigation. The director of the natural resources department may, and upon the complaint shall, investigate to determine whether or not the storage, collection, maintenance, or display of waste or solid wastes is in violation of this chapter. If the violation could be a serious health concern, the director should involve the health officer in the investigation. Upon obtaining reasonable ground to believe this chapter or the county-tribal MOU has been violated, the director, public safety officer, or health officer may enter private property with reasonable notice and at reasonable times. For purposes of this chapter, "reasonable notice" means verbal or written notice provided to an adult person who resides on or is an owner of said property. The notice shall state to the effect that the enforcement officer has reasonable grounds to believe that there is a violation of this chapter occurring on the premises at a certain time. "Reasonable time" may be any time between the hours of 8:00 a.m. to 6:00 p.m. except Sundays and tribal holidays.

(d) Notice of Infraction — Issuance by Enforcement Officer. Any tribal enforcement officer has authority to issue a notice of infraction when he or she has reasonable cause to believe a violation of this chapter has occurred.

(e) Abatement in Emergency Situations. The health officer, director of the natural resources department, or a public safety department officer may order immediate abatement of a nuisance if he or she finds that the existence of the nuisance poses an extreme hazard to the health, safety, and welfare of reservation residents or the environment. If, under emergency conditions, the person in charge of the property is unwilling or unable to carry out the necessary abatement action in a reasonable

period of time under the circumstances or cannot be located after diligent inquiry, then the health officer or director of the natural resources department or his or her designees may enter the premises and perform actions necessary to immediately abate the nuisance.

(f) Infraction Procedure. (1) Notice of Infraction — Determination Final unless Contested; Form. A notice of infraction represents a determination that a violation of this chapter has been committed. This determination will be final unless contested as provided in this chapter.

(2) The form for the notice of infraction shall include the following statements:

(A) That the notice represents a determination that a violation of the solid waste code has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter.

(B) That an infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction.

(C) The specific infraction for which the notice was issued.

(D) The monetary and other penalties established for the infraction.

(E) The options provided in this chapter for responding to the notice and the procedures necessary to exercise these options.

(F) That at any hearing to contest the determination the Tribe has the burden of proving by a preponderance of the evidence that the infraction was committed and the person may subpoena witnesses including the health official.

(G) That at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses.

(H) That the person must respond to the notice as provided in this chapter within fifteen (15) days of the issuance of the infraction; otherwise, the person will be deemed to have committed the infraction and the maximum monetary penalty will be imposed.

(I) That failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating

circumstances will result in a determination that the infraction was committed and the maximum monetary penalty will be imposed.

(J) That failure to respond to a notice of infraction or the nonpayment of a monetary fine may result in the person's case being sent to a collection agency.

(K) That the person promises by signing the notice of infraction to respond to the notice in one of the ways provided in this chapter. If the person refuses to sign the notice, the enforcement officer shall write "refused" in place of the person's signature. A person who refuses to sign the notice of infraction is presumed to have notice of its contents.

(L) That if the person cleans up the solid waste or sewage from the premises within seven (7) days and immediately notifies the enforcement officer who issued the notice that the premises have been cleaned up and that if the enforcement officer thereafter confirms that the premises are now clean, the monetary penalty will be forgiven.

(M) That if the person fails to clean up the solid waste and/or sewage from the premises within fifteen (15) days, the Tribe may clean up the premises and the cost for cleaning up the premises plus an administrative charge of one hundred dollars (\$100) shall be paid to the Tribe by the person(s) who violated this chapter and failed to timely clean up the premises.

(3) Response to Notice of Infraction; Contesting Determination; Hearing; Failure to Appear. (A) Any person who receives a notice of infraction shall immediately clean up his or her premises within seven (7) days as set forth above; but if the premises have not been cleaned up to the satisfaction of the enforcement officer, said person shall respond to such notice as provided in this section within fifteen (15) days of the date of the notice.

(B) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the director of the natural resources department. A check or money order in the amount of the penalty prescribed for the infraction made payable to the Suquamish Tribe must be submitted with the response. When a response which does not contest the determination is received, appropriate documentation shall be entered in the natural resources department's records and a copy of the documentation shall be mailed to the person who committed the infraction at the address listed on the notice of infraction.

(C) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the NRD director who shall forward the request to the tribal hearing officer who shall set a time, date, and place for a hearing. If the person is not satisfied with the final decision of the hearing officer, the person has ten (10) days from the date the hearing officer's decision was received to file an appeal with the Suquamish Tribal Court. The Court shall notify the person in writing of the time, place, and date of the hearing; that date shall not be sooner than seven (7) days from the date of the notice except by mutual agreement.

(D) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing before the hearing officer for that purpose and submitting it, either by mail or in person, to the hearing officer. The hearing officer shall notify the person in writing of the time, place, and date of the hearing; that date shall not be sooner than seven (7) days from the date of the notice except by agreement.

(4) If any person issued a notice of infraction:

(A) Fails to clean up the solid waste or sewage as allowed herein or fails to respond to the notice of infraction as provided in §10.6.6(f)(3)(A), or

(B) Fails to appear at a hearing requested pursuant to §10.6.6(f)(3)(C) or §10.6.6(f)(3)(D), the hearing officer or Tribal Court judge before whom the matter was scheduled for hearing shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and any other penalty authorized by the Suquamish Tribal Code.

(5) Hearings — Procedure and Counsel. (A) Procedures for the conduct of all hearings provided for in this chapter, to the extent that they are consistent with the procedures set forth herein, may be established by the hearing officer for hearings before said person and by the chief judge of the Suquamish Tribal Court for hearings in Tribal Court.

(B) Any person subject to proceedings under this chapter may be represented by counsel at his or her own expense.

(C) The Tribe may be represented by counsel.

(6) Tribal Court Hearing Contesting the Determination That an Infraction Has Been Committed; Appeal. (A) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(B) The Court may consider the notice of infraction and any other written report under oath submitted by the health official who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the official's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the official, and has the right to present evidence and examine witnesses present in court.

(C) After consideration of the evidence and argument, the Court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the Court's records. Where it has been established that the infraction was committed, an appropriate order shall be entered in the Court's records.

(D) An appeal from the Court's determination or order shall be to the Suquamish Tribal Court of Appeals. The decision of the Suquamish Tribal Court is subject only to discretionary review.

(7) Hearing before the Hearing Officer to Explain Mitigating Circumstances. (A) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(B) After the hearing officer has heard the explanation of the circumstances surrounding the commission of the infraction, appropriate documentation shall be entered in the Tribe's natural resources department records.

(C) There may be no appeal from the hearing officer's determination or decision. (Res. 2001-019 (part), passed Feb. 26, 2001; amended by Res. 04-136 (part), passed Oct. 25, 2004)

10.6.7. Penalties and Removal Costs. (a) Civil Penalties. When the violating material or substance(s) is not cleaned up within seven (7) days of the date the notice of infraction is issued, the enforcement officer, hearing officer, or judge shall impose a civil penalty on the person(s) who violates this chapter. The amount of the civil penalty shall be fifty dollars (\$50) for the first violation, one hundred dollars (\$100) for any subsequent similar violation within two (2) years of the first violation, and two hundred dollars (\$200) for any additional similar violation within two (2) years of the first violation.

Provided however, for hazardous waste, infectious waste, and asbestos waste violations, the civil penalty shall be five hundred dollars (\$500) for the first violation and one thousand dollars (\$1,000) for any subsequent violation within five (5) years of the first violation.

(b) Verbal or Written Warning. Except in cases of hazardous waste, infectious waste, or asbestos waste, violators of this chapter will be given a reasonable time not to exceed thirty (30) days to remove the violating waste materials or substance when a verbal or written warning is given; however, tribal enforcement officers are not required to give any warning.

(c) Penalty Increases. After the notice of infraction time limit given for voluntary cleanup without penalty expires, the civil penalty amount listed above shall increase twenty-five dollars (\$25) per day until the violating material or substance is removed.

(d) Removal Costs. In addition to the civil penalties set forth above, the hearing officer or Tribal Court shall require the violator to compensate the Tribe for costs incurred in removing the solid waste, sewage, refuse, or offensive substance and in eliminating the effects of the unlawful placement, plus a one hundred dollar (\$100) administrative charge.

(e) Exclusive of Litter Control Code. Penalties and procedures provided in this chapter and the litter control code, Suquamish Tribal Code Chapter 10.10, are exclusive of one another. If a single act or a cumulative set of actions violates both the solid waste and litter control codes, a person may be fined or penalized under either or both code(s). (Res. 04-136 (part), passed Oct. 25, 2004; amended by Res. 08-145, passed Sep. 15, 2008)

10.6.8. Tribe's Recovery of Cleanup Costs. In the event that a person violating this chapter fails to timely clean up the waste materials from the premises as allowed in this chapter or as further allowed by the hearing officer or Tribal Court, the Tribe's NRD director may make arrangements to clean up the premises and shall thereafter bill the responsible party for the costs of removal of the violating material and/or substance.

(a) Enforcement Tools. In the event that a person who violated this chapter fails to clean up the subject premises and the Tribe cleans up such premises, said person shall not be eligible for any services and/or privileges provided by or administered by the Tribe, such as but not limited to obtaining a license, permit, or identification card necessary to exercise tribal treaty fishing and hunting rights, sell fireworks, or obtain a business license.

(b) Lien. The Tribe may file a lien against the real property of any person who fails to pay for the Tribe's costs to clean up such person's premises. The lien shall be filed with the Tribal Court, the Bureau of Indian Affairs, and, if fee land, with the Kitsap County Auditor to document the amount owing to the Tribe and to provide notice pursuant to this chapter that the said premises shall not be transferred unless the lien

amount plus interest running at the rate of one percent (1%) per month from the date of issuance of the lien has been paid to the Tribe's finance department. At the option of the Tribal Council, if the lien amount has not been paid within thirty (30) days of being issued, thereafter the Tribal Council may request a tribal attorney to commence foreclosure proceeding upon the premises in Tribal Court. The Tribal Court may follow the state statutory procedure for lien foreclosure on real estate.

(c) Garnishment of Wages. Garnishment of wages of the person violating this chapter shall also be available as a tool for the tribal attorney to collect the costs to the Tribe for having to clean up such person's premises. (Res. 04-136 (part), passed Oct. 25, 2004)

10.6.9. Criminal and Traffic Codes Take Precedence. Nothing in this code shall be interpreted to conflict with nor supersede the provisions of the tribal criminal and traffic codes. When a person is cited with a violation of the tribal criminal code or the tribal traffic code, said codes shall be interpreted to take precedence over the provisions of this code. (Res. 04-136 (part), passed Oct. 25, 2004)

10.6.10. Severability. Should any section or portion of this chapter be held unlawful and unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section or portion thereof directly specified in the decision. All other sections or portions of this chapter shall remain in full force and effect. (Res. 2001-019 (part), passed Feb. 26, 2001)

10.6.11. Effective Date. The amendments to this chapter shall become effective on January 1, 2005. (Res. 04-136 (part), passed Oct. 25, 2004)

Note: Subsection 10.6.4(w) changed to 10.6.4(v) to correct original omission of letter (v).