

TITLE 4
NATURAL RESOURCES
AND
ENVIRONMENTAL PROTECTION

CHAPTER 4-1
SOLID WASTE (12/04/1993)

SOLID WASTE

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SOLID WASTE

§ 1. General

1.1. Introduction

The Forest County Potawatomi Community is a federally recognized Tribe of Indians organized under a Constitution adopted on June 5, 1982 and approved by the Secretary of the Interior on July 14, 1982 pursuant to the provisions of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. ss. 461 et seq., as amended. The Forest County Potawatomi Community recognizes that its land is one of its most important resources. It is the tradition and policy of the Forest County Potawatomi Community to preserve the environment as part of its culture for the health and well being of all who come on to and reside on its Reservation now and for generations to come. Therefore pursuant to powers delegated under Article IV, Section 1 (d) of the Forest County Potawatomi Community Constitution and By-laws the General Council hereby enacts this Ordinance.

1.2. Statement of Intent

The intent of this Ordinance is to provide protection for the health, safety and welfare of all persons on or near the Forest County Potawatomi Reservation.

1.3. Effect of Rules

The following are standards for the protection of public health relating to:

- (A) General conditions for solid waste disposal facilities;
- (B) Solid waste storage;
- (C) Collection and transportation of solid waste;
- (D) Treatment, processing, and utilization of solid waste;
- (E) Disposal of solid waste;
- (F) Site and plan approval, denial, cancellation of approvals for solid waste disposal facilities, and exemption of certain operational requirements for sanitary landfills;
- (G) Required information for approval of sanitary landfill areas;
- (H) Operational requirements for sanitary landfills;
- (I) Incineration of solid waste disposal;
- (J) Non-conforming sites and facilities for solid waste disposal; and
- (K) Variances in solid waste disposal programs.

§ 2. Definitions

For the purpose of this Ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

“Cell” is compacted refuse completely enveloped by a compacted cover material.

“Collection Site” shall mean any place designated by the Executive Council as the site where solid waste may be presented for disposal and includes transfer stations.

“Garbage” is all putrescible (decayable) wastes, including animal and vegetable matter, animal offal and carcasses and recognizable industrial byproducts, but excluding sewage and human wastes.

“Hazardous solid wastes” shall mean any solid waste defined as hazardous waste by the Environmental Protection Agency under the provisions of the Resource Conservation and Recovery Act of 1976, as amended and includes but is not limited to, explosives, pathological wastes, pesticides, chemicals, and other toxic materials which are harmful to public health.

“Incineration” is the process of burning solid, semisolid or gaseous combustible wastes to an inoffensive gas or residue containing little or no combustible material.

“Local governing agency” refers to the Forest County Potawatomi Community Executive Council, the duly elected and governing body of the Forest County Potawatomi Community, which is empowered to undertake solid waste management programs.

“Non-resident” shall mean any person who does not have a permanent place of abode on the Reservation, except as hereafter provided. Non-resident does not mean any temporary or seasonal resident, for purposes of solid waste generated at the temporary or seasonal residence and does not mean any place of business, for purpose of solid waste generated at the business.

“Occupant” shall mean any owner, person or persons holding under a land assignment or person or persons holding under a housing lease.

“Open burning” means any fire wherein the products of combustion are emitted directly into the atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.

“Open dump” is the consolidation of solid waste from one or more sources, at a disposal site which has unsanitary conditions, little or no cover, usually burning, and little or no management.

“Person” means any individual, firm, governmental unit, organization, partnership, corporation or company.

“Putrescible solid waste” is capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.

“Radioactive solid waste” is any radioactive material.

“Refuse” is all non-putrescible waste.

“Reservation” shall mean the Forest County Potawatomi Reservation.

“Executive Council” shall mean the Forest County Potawatomi Community Executive Council, the duly elected governing body of the Forest County Potawatomi Community.

“Sanitary landfill” is the method of disposing of solid waste on land in a sanitary manner without creating nuisances or hazards to public health or safety by utilizing the principles of engineering to confine the waste to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of compacted earth at the conclusion of each day's operation or at more such frequent intervals as may be necessary.

“Solid Waste” is all garbage, refuse rubbish, trash and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluent, dissolved materials in irrigation return or other common pollutants.

“Solid Waste Administrator” means that person designated to act in that capacity by the Tribal Executive Council.

“Solid waste collector” means any person who collects or transports solid waste.

“Solid waste disposal” is the collection, storage, treatment, utilization, processing, or final disposal of solid waste.

“Solid waste disposal facility” is land, operational personnel, equipment, or other resources used in the disposal of solid wastes.

“Solid waste disposal site” is any place at which solid wastes are disposed of by incineration, sanitary landfill or other methods.

“Spoiled food” means any food which has been removed from sale by the United States Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction over judging food unfit for human consumption.

“Transfer Station” shall mean any facility approved by the Forest County Potawatomi Community Executive Council for the purpose of collecting, transporting, and disposing of solid waste.

“Tribal Court” shall mean the Forest County Potawatomi Community Tribal Court.

“Tribal Health Services” shall mean the Health Director, or his or her authorized representative.

“Tribe ”shall mean the Forest County Potawatomi Community.

“Vector” is an insect or animal which transmits infectious diseases from one person or animal to another.

“Water supply watershed” is an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.

§ 3. Applicability; Solid Waste Disposal Program

3.1. Applicability.

These solid waste disposal standards are for general application throughout tribal lands unless otherwise specifically indicated by their context. The official policy and purpose of the Tribe in regard to solid waste control is set forth in this Ordinance.

3.2. Authority to Establish Programs

In addition, the Forest County Potawatomi Community Executive Council is authorized and directed to engage in research, conduct investigations and surveys, make inspections, and to establish a reservation-wide solid waste disposal program. In establishing a program, the Tribe shall have the authority to:

- (A) Provide standards for the establishment, location, operation, maintenance, use and discontinuance of solid waste disposal sites and facilities. Such standards shall be designed to accomplish the maintenance of safe and sanitary conditions in and around solid waste disposal sites and facilities, and shall be based on recognized public health practices and procedures, sanitary engineering research and studies, and current technological development in equipment and methods.
- (B) Develop a comprehensive program for the implementation of safe and sanitary practices for disposal of solid waste throughout the Tribal Reservation boundaries.
- (C) Advise, consult, cooperate, and conduct with other agencies and units of government, and industries and individuals in the formulation and carrying out of a solid waste disposal program.

§ 4. General Conditions

4.1. All solid waste shall be stored, collected, transported, treated, utilized, processed, reclaimed, recycled, and disposed of in a manner consistent with the requirements of these standards. The Forest County Potawatomi Community Executive Council is responsible for the enforcement of the standards and encourages cooperation from individuals, municipalities, county governments, local health departments, sanitary and regional districts and private enterprises.

4.2. Notwithstanding Section 3.2(A) above, no radioactive solid wastes shall be collected and transported, stored, treated, processed, disposed of or reclaimed, except as specifically authorized

by a radioactive material license issued by the Forest County Potawatomi Community Executive Council.

§ 5. Solid Waste Storage

5.1. The owner or occupant of any premise, business establishment or industry shall be responsible for the sanitary storage of all solid waste accumulated at that premise, business establishment or industry.

5.2. Garbage shall be stored in:

- (A) Durable rust resistant, nonabsorbent water tight, rodent proof, and easily cleanable containers with a close fitting insect-tight cover and with adequate handles or bails to facilitate handling or,
- (B) Other types of containers acceptable to the Executive Council and conforming to the intent of this Section.

5.3. Refuse shall be stored in durable containers or as otherwise provided in this Section. Where garbage is stored in combination with non-putrescible refuse, containers for the storage of the mixture shall meet the requirements of garbage containers.

5.4. Hazardous solid waste, pending disposal, shall be stored in containers and at locations prescribed in the applicable State or Federal regulations for control of the specific hazardous material.

5.5. All containers for the storage of solid waste shall be maintained in such a manner as to prevent the creation of a nuisance or unsanitary conditions. Containers that are broken or otherwise fail to meet this standard shall be replaced with acceptable containers. Refuse too large or otherwise not suitable for storage in containers shall be stored in a nuisance free manner consistent with requirements set by the Executive Council.

5.6. Recyclables, as defined in Section 6.5, may be stored in a receptacle designated for that purpose, as provided for in Section 6.8.

5.7. Non-recyclables, as defined in Section 6.6, may be stored in bags designated for that purpose, as provided for in Section 6.9.

5.8. Unless otherwise provided for in a written rental agreement or lease, the tenant of any single unit detached residence and the landlord of any multi-unit residence shall be responsible for the provision and maintenance of containers as specified in Section 5.2(B)(1) above.

§ 6. Collection and Transportation Solid Waste

6.1. The solid waste collector shall be responsible for the satisfactory collection and transportation of all solid waste to a disposal site, transfer station or facility.

6.2. Vehicles or containers used for the collection and transportation of garbage or refuse containing garbage, shall be covered, leak proof, durable and of easily cleanable construction. These shall be cleaned as often as necessary to prevent a nuisance or insect breeding and shall be maintained in good repair.

6.3. Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom, and shall be covered when necessary to prevent blowing of material. If spillage should occur, the material shall immediately be picked up by the solid waste collector and returned to the vehicle or container and the area properly cleaned.

6.4. All solid waste presented for collection, whether at the roadside, at a designated solid waste collection site or at the Transfer Station shall be treated as provided by this Section.

6.5. "Recyclables" shall mean:

- (A) Glass containers.
- (B) Metal cans.
- (C) Newspaper.
- (D) Cardboard.
- (E) Plastics. HDPE (high density polyethylene) and PETE (polyethylene terephthalate) only.
- (F) Aluminum cans.
- (G) Scrap aluminum.
- (H) Motor Oil.

6.6. Non-recyclables means all solid waste not listed in paragraph (E) excluding hazardous waste.

6.7. Recyclables shall be prepared for collection as follows :

- (A) Glass containers: Lids shall be removed; the Interior shall be rinsed out.
- (B) Metal cans: Interior shall be rinsed out.
- (C) Newspapers shall be bundled and tied with string or placed in a brown paper bag.
- (D) Cardboard shall be flattened, tape and seals shall be removed and pieces shall be no greater than 24 inches long x 24 inches wide.
- (E) Plastic: Caps shall be removed and the Interior shall be rinsed out.

(F) Aluminum Cans: The Interior shall be rinsed out.

(G) Motor oil shall be placed in a nonbreakable container with a leakproof cap.

6.8. Recyclables shall be placed in a receptacle designated for that purpose and set out at roadside for pickup on the regular solid waste collection day. Recyclables transported to a designated solid waste collection site shall be disposed of according to the designations at the site.

6.9. Non-recyclables shall be disposed of only in bags specifically designated for that purpose by the Tribe.

6.10. No person shall dispose of recyclables in bags designated for the disposal of non-recyclables.

6.11. No designated solid waste collection site operated by the Tribe and the contracting township, no transfer station operated by the Tribe and the contracting township, and no collector transporting solid waste to a solid waste collection site or transfer station operated by the Tribe and the contracting township shall collect or accept any solid waste in any bags designated for nonrecyclables if the bag contains any recyclables.

6.12. After written warning, any collector transporting solid waste to a solid waste collection site or transfer station operated by the Tribe may suspend the collection of all solid waste from any household or other collection site if any provision of this chapter is violated at that site, until compliance with this chapter is shown.

6.13. The Solid Waste Administrator and the contracting township shall fix the fee to be charged for the bags designated for non-recyclables. Such fee shall be based on the amount necessary to cover the cost of the bags and the amount necessary to cover the operating and capital costs of all tribal solid waste collection facilities and systems.

6.14. The Solid Waste Administrator shall fix the fee to be charged for the deposit of non-recyclable solid waste that is not contained in bags designated for such use, included but not limited to furniture, appliances, tires and construction and demolition materials.

§ 7. Treatment, Processing and Utilization of Solid Waste

All facilities used in the treatment and processing of solid waste for final disposal, or for utilization by reclaiming or recycling prior to final disposal, shall be operated in such a manner as to prevent the creation of a nuisance, unsanitary condition, or potential health hazard. Facilities used in sorting, separating, reducing, shredding, compressing, reclaiming, recycling, and other associated processes shall conform to these standards. The Forest County Potawatomi Community Executive Council reserves the right to request submission of plans for approval to evaluate site location, design, operational techniques and procedures and overall sanitation aspects of any facility used in the treatment, processing, or utilization of solid waste.

§ 8. Disposal of Solid Waste

- 8.1. The disposal or utilization of solid waste shall be by the following approved method.
 - (A) Disposal by other sanitary methods which may be developed and demonstrated to be capable of fulfilling the basic requirements of these standards, and which have been approved by the Forest County Potawatomi Community Executive Council. Plans for any such methods, including reclaiming or recycling processes, shall be submitted to the Tribe for approval as required by Section 9.1 of these standards.
- 8.2. No person shall leave, deposit, or dump solid waste anywhere within the reservation except at designated solid waste collection sites or the transfer station. Sites shall be designated by the Executive Council and locations of such shall be published and posted.
- 8.3. No non-resident shall dispose of solid waste anywhere within the reservation.
- 8.4. No person shall dispose of any solid waste generated outside the boundaries of the reservation on any lands, dumping sites or landfill within the boundaries of the reservation.
- 8.5. No person shall dispose of solid waste on any private or public residential property, where disposal of such wastes will cause a public nuisance or health hazard, by permitting foul odors to escape or by infestation of insects or rodents.
- 8.6. No person shall deposit solid waste from any stopped or moving vehicle onto any state, county, town, or tribal highways, roads, or right of ways.
- 8.7. No person shall dispose of any hazardous waste within the reservation.
- 8.8. No person shall dispose of any solid waste at a designated solid waste collection site except in the manner provided by this Ordinance.
- 8.9. No person shall dispose of any solid waste at a designated solid waste collection site except in the bin, container, or area specifically designated for the particular type of solid waste disposed.
- 8.10. No person shall dispose of any solid waste at a designated solid waste collection site except during the hours when such site is open to accept solid waste.
- 8.11. No person shall dispose of any sewage or human waste except into a community sanitary sewage system or individual sanitary system constructed and operated according to Indian Health Service specifications on Indian owned land, or State of Wisconsin specifications on non-Indian owned land, or except into an enclosed pit in operation and use on the date of passage of this chapter.

§ 9. Site and Plan Approval, Denial; Cancellation of Approvals for Solid Waste Disposal Facilities and Exemption of Certain Sites

9.1. Site and Plan Approval. Effective after adoption, except as otherwise provided in these standards, no person shall establish a solid waste disposal facility without first obtaining approval from the Tribal Executive Council for the site location and operational plan.

9.2. Request for approval of site locations shall be submitted to the Forest County Potawatomi Community Executive Council in writing. Approval by the Executive Council shall be based on site approval, and such approval shall be obtained prior to submission of the operational plan for the facility. Denials of approval of proposed site locations shall be made in writing by the Executive Council.

9.3. Each request for approval of sanitary landfill sites, operational plans, and other solid waste disposal facilities shall be accompanied by the information and data required by Section 10.1 and other applicable Sections of these standards.

9.4. Requests for approval of solid waste disposal facilities and operations submitted by a private agency shall be accompanied by an approval letter from the Tribal Executive Council.

9.5. Upon receipt of the request for approval, the Executive Council shall review the request to assure that all provisions of these standards are met and that proposed facilities and operations will comply with other applicable Tribal laws, rules, and regulations. Based on its review, the Executive Council shall either approve or deny the request in writing.

9.6. Denial of Approval. When a request is denied approval the applicant shall be notified in writing of the reasons therefore. A denial shall be without prejudice to the applicants rights to a hearing before the Executive Council or for filing a future request after revisions are made to meet objections specified as reasons for denial.

9.7. Cancellation of Approval. The Executive Council may cancel any approval if it finds that the disposal operation is not in conformance to these standards.

§ 10. Operational Requirements for Solid Waste Transfer Stations

10.1. All Transfer Stations shall be designed and operated in a manner so as to prevent the creation of a nuisance or potential health hazard and must comply with the applicable requirements of these standards and those of the U.S. Environmental Agency.

10.2. Construction of a Transfer Station shall not be initiated prior to the approval of plans by the Executive Council.

10.3. The approach road to the disposal site shall be of all-weather construction and maintained in good condition.

10.4. Plans and drawings for each proposed Transfer Station, including a plot plan of all facilities, together with a detailed description of proposed operational procedures, shall be submitted to the Executive Council for review and evaluation.

10.5. The operation for each proposed Transfer Station shall be considered for approval on its merits, shall be in compliance with the following criteria, and in accordance with acceptable engineering practices.

- (A) The Transfer Station plant shall be so situated, equipped, operated, and maintained as to minimize interference with other activities in the area.
- (B) Signs shall be posted at the site entrance specifying location of the active dumping area and indicating the normal hours the facility is in operation for public use. Access to the facility shall be limited to those times when authorized personnel are on duty.
- (C) All solid waste to be disposed of at the site shall be confined to the active dumping area. Adequate storage facilities shall be provided.
- (D) Facilities shall be designed to provide for dust control in the unloading and charging areas.
- (E) Effective vector control measures shall be applied to control flies, rodents, and other insects or vermin.
- (F) Fire-fighting equipment shall be available in the storage and charging areas and elsewhere as needed.
- (G) Arrangements shall be made with the local fire protection agency to provide fire-fighting services in an emergency.
- (H) Communications shall be provided for emergency purposes.
- (I) Equipment shall be provided in the storage and charging areas and elsewhere as needed or as may be required in order to maintain the plant in a sanitary condition.
- (J) All residue from the Transfer Station plant shall be promptly disposed of at an approved site and in a manner consistent with the applicable Sections of these standards.
- (K) All waste water from the Transfer Station plant shall be disposed of in accordance with the applicable regulations, standards, or requirements of the Tribe.
- (L) Upon completion of construction of the facility, and prior to initial operation, the Executive Council shall be notified in order that an inspection may be made to the facility to determine conformance with the approved plan and with the applicable provisions of these standards.
- (M) Appropriate facilities shall be provided to confine possible wind-blown material within the area. At the conclusion of each day of operation, all wind-blown

material resulting from the operation shall be collected and returned to the area by the owner or operator.

- (N) Animal carcasses, slaughtering waste, hatchery waste and other animal waste shall not be accepted at the Solid Waste Transfer Station, except as may be permitted by applicable Federal and Tribal regulations.
- (O) No hazardous wastes shall be accepted at the Solid Waste Transfer Station except as may be permitted by applicable Federal and Tribal regulations.

§ 11. Nonconforming Sites and Facilities

11.1. Modification of existing sites and facilities and of operating procedures to conform to the requirements of these standards shall be accomplished. When the degree of necessary improvement is of such extent that immediate compliance cannot be accomplished, special consideration may be given by the Executive Council. In such event, the owner of the nonconforming site or facility shall submit a report setting forth a program and plan for compliance with these standards together with a time scheduled for submission of plans and specifications and commencement of construction of necessary improvements.

11.2. A person operating an open dump for disposal of solid waste on the effective date of these standards and not choosing to conform to these standards shall upon abandoning the site or closing operations take the following actions:

- (A) Implement effective rat control, including baiting for at least two (2) weeks after closing, to prevent rat migration to adjacent properties.
- (B) Compact and cover existing solid waste. Final cover for the entire area shall be two feet or more of compacted earth.
- (C) Implement erosion control measures by grading and seeding if necessary.
- (D) Post signs indicating the dump site closure.

§ 12. Receptacles for Garbage, Refuse to be Provided

All householders and proprietors of business houses shall place garbage and refuse in receptacles provided for that purpose, by the Tribe or the homeowner for removal by the sanitary workers.

§ 13. Use of Designated Receptacles Required

It shall be unlawful for any person to place in or on any road or premises filth of any kind whatsoever which would render the roads and premises unclean, except in proper receptacles accessible to collection vehicles.

§ 14. Tree Limbs, Cuttings, Stumps, Shrubbery, Yard Waste

It shall be the duty of the property occupants to dispose of tree limbs, cuttings, stumps, shrubbery, and other yard waste.

§ 15. Debris From Construction, Demolition, Repair of Buildings is Duty of Occupant

It shall be the duty of the property occupant to dispose of debris resulting from the construction, demolition, or repair of buildings. Any contractor generating scrap and demolition material shall be solely responsible for its removal from the Reservation to a licensed facility.

§ 16. Disposal of Discarded Appliances, Etc.

It shall be the duty of the property occupant to dispose of discarded appliances such as iceboxes, refrigerators, stoves and other items too large to be handled by a regular garbage truck and to call a private hauler and arrange for a special pickup of such items. Bi-annual general cleanups provided by the hauler shall be posted and utilized.

§ 17. Scavenging Garbage Containers, Landfills, Etc.

It shall be unlawful for any person to empty any garbage, rubbish or refuse from any garbage can or container, whether the same shall lie upon the public roads or not, for the purpose of combing through the contents of said can or containers for salvageable materials or food. It shall also be unlawful to do any scavenging from the Tribal landfill. Violators will be prosecuted as trespassers.

§ 18. Enforcement

18.1. The Solid Waste Administrator, all tribal law enforcement and conservation enforcement personnel shall be empowered to enforce this Ordinance.

18.2. Actions for violations of this Ordinance may be commenced in Tribal Court by citation or by summons and complaint.

18.3. Violation of any provision of this chapter may be punished or remedied by a civil forfeiture not to exceed \$500. Each day of any continuing violation may be charged as a separate violation, and a separate forfeiture may be imposed.

18.4. Repeated violations by occupants or Tribal Members may be punished by revocation of land assignments or termination of housing leases.

18.5. Repeated violations by Tribal Members may be punished by revocation or suspension of the Members Tribal Hunting and Fishing privileges.

§ 19. Variances

19.1. In order to avoid undue hardships, promote the effective and reasonable application and enforcement of these standards, the Executive Council may grant variances from the

requirements of these standards in accordance with such procedures and conditions as it may prescribe. Each application for variance shall be examined on the basis of conditions prohibiting full compliance.

19.2. Variable factors such as population density, daily or seasonal loadings, nature of wastes, location of facility or facilities, water table conditions, topography, soil and geology, climate, land use, stream and reservoir classification are to be taken into account in determining the degrees of variance, if any, which may be allowed.

§ 20. Limitations

Nothing in these standards shall be construed to limit the authority of the Tribal General Council from adopting more stringent solid waste disposal requirements than those set forth in these standards.

§ 21. Severability

If any provision of these standards or its application to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the standards which can be given effect without the invalid provisions or applications, and to this end the provisions of these standards are considered to be severable.

§ 22. Repeal

All rules and regulations heretofore adopted by the Tribal General Council which are in conflict with the provisions of this Ordinance are hereby repealed.

Legislative History:

6/17/1993	Recommended by the Tribal Ordinance Committee
12/4/1993	Enacted by General Council Resolution No. GC-009-93

References in text:

For the Resource Conservation and Recovery Act of 1976, referred to at Section 2.1(D), See 42 U.S.C. §§6901-6992k;

Notes:

See also, Indian Lands Open Dump Cleanup Act of 1994, Pub. L. 103-399, Sec. 2, Oct. 22, 1994, 108 Stat. 4164, 25 U.S.C. § 3901 et seq.

CHAPTER 4-2
TIRE DUMPS (12/04/1993)

TRIBAL TIRE DUMP

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TRIBAL TIRE DUMP

§ 1. Declaration of Policy

1.1. The Forest County Potawatomi Community hereby declares that it is the tribal policy to protect and conserve its environment and common resources for the health, benefit and welfare of the Potawatomi people, their children, and their unborn children. It is the Potawatomi people's belief embodied in their culture to respect the earth and to allow no one to degrade or threaten the integrity of their lands and resources. To that end the Forest County Potawatomi Community hereby enacts this Tribal Tire Dump Ordinance for the health, safety, and welfare of the Potawatomi people.

1.2. This Ordinance shall extend to all persons and subjects, to all lands and other property including natural resources, and to all waters and air space within the exterior boundaries of the Forest County Potawatomi Community, including any land which may hereafter be added to the reservation under any law of the United States, except as otherwise provided by law.

1.3. It is the policy of the Forest County Potawatomi Community to prohibit tire dumps on any Tribal lands. Any person who violates this Ordinance shall be prosecuted under Sections 3, 4 and 5 of this Ordinance. Under the Tribal Constitution the Tribe is vested with the power to enact and enforce ordinances governing the conduct of any persons within the exterior boundaries of the Forest County Potawatomi reservation.

§ 2. Definitions

“Tribal lands” are all lands held in trust by the United States for the Forest County Potawatomi Community or otherwise owned by the Tribe including all lands subject to past, present and future leasehold interests or land assignments made by the Tribe and/or the Bureau of Indian Affairs.

“Tribe” means the Forest County Potawatomi Community organized according to the Constitution and Bylaws amended and adopted by the Tribe on June 5, 1982, and approved by the Assistant Secretary of Interior on July 14, 1982, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

“Waste tire” means a tire that is no longer suitable for its original purpose because of wear, damage or defect.

“Tire dump” means any location that is used for storing or disposing of waste tires except those locations where waste tires generated by individual Tribal members residing on the reservation are stored within 100 yards of their own residence.

“Nuisance” means a danger to public health, safety or welfare, a fire hazard, or a danger to the environment.

“Physical injury” includes unprivileged intrusions and encroachments; the injury may be surface, subsurface or suprasurface; the injury may arise from activities on Tribal lands, or from activities outside Tribal lands which affect Tribal lands.

“Interference with an interest” is any activity other than physical injury which lessens the possibility of use or enjoyment of the interest.

§ 3. Tire Dumps Declared a Nuisance

3.1. Tire dumps are hereby declared to be a public nuisance as that term is used in Chapter 823 of the Wisconsin Statutes.

3.2. The Tribe, on behalf of its members, will bring legal actions to recover damages, abate public nuisances and to obtain injunctions to prevent same.

3.3. These actions will be brought pursuant to Chapter 823 of the Wisconsin Statutes:

3.4. The Tribe will seek damages which the Tribe finds to be as follows:

(A) For each tire stored in any tire dump as defined in this Ordinance the sum of \$1.00 per day until removed from Tribal lands.

(B) Each day from the date of the deposit of each tire until it is removed shall be deemed to be a separate item of damages.

3.5. In addition, the Tribe will seek the expense of abating any public nuisance as permitted by Chapter 623 of the Wisconsin Statutes.

§ 4. Tire Dumps Declared to Constitute Physical Injury to, or Interference With, Real Property

4.1. Creation of a tire dump on Tribal lands is hereby declared to constitute physical injury to or interference with the property or interest of the Tribe therein.

4.2. Physical injury includes unprivileged intrusions and encroachments; the injury may be surface, subsurface or suprasurface; the injury may arise from activities on Tribal lands, or from activities outside Tribal lands which affect Tribal lands.

4.3. Interference with an interest is any activity other than physical injury which lessens the possibility of use or enjoyment of the interest.

4.4. The Tribe, on behalf of its members, will bring legal action to recover damages for physical injury to, or interference with, Tribal lands or interests therein as well as to restrain further physical injury or interference, abate present physical injury or interference and for other appropriate relief.

4.5. These actions will be brought pursuant to Chapter 844 of the Wisconsin Statutes.

§ 5. Trespass

Any person who enters upon Tribal land for purposes of creating or adding to a tire dump will be prosecuted for criminal trespass in State court pursuant to §943.13(1)(b) of the Wisconsin Statutes after personal or written notification of their trespass.

§ 6. No Waiver of Sovereign Immunity

Nothing contained in this Ordinance and no action taken pursuant hereto shall be deemed to constitute a waiver of the sovereign immunity of the Tribe or to constitute an agreement to consent to any suit for counterclaims, offsets, injunction or any other form of relief against the Tribe of any nature whatsoever.

§ 7. Decision to Bring Action

The Executive Council is hereby given the authority to start actions under this Ordinance, including retaining legal counsel and/or consultation with the Department of Natural Resources, the United States government and its agencies and State and local law enforcement officials at any general or special meeting of the Executive Council called for that purpose.

§ 8. Severability

If any part of this Ordinance is found unlawful or invalid by any court of competent jurisdiction, such finding shall not invalidate any other parts of this Ordinance or affect any actions pending or thereafter brought pursuant to such other parts. The invalid parts shall be deemed severable without thereby invalidating the remaining parts of the Ordinance.

Legislative History:

5/14/1988 Adopted by General Council Resolution No. GC-007-88
12/4/1993 This Ordinance is largely superseded by Tribal Solid Waste Ordinance, 4-1 FCPC Code, enacted by General Council Resolution No. GC-009-93

References in text:

Wis.Stat. §943.13(1)(b) is now § 943.13(1m), which provides: “Whoever does any of the following is subject to a Class B forfeiture: ... (b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.”