

**TRIBAL WATER CODE
OF THE
SEMINOLE TRIBE OF FLORIDA**

SUBTITLE B

WATER QUALITY CODE

PART 11. GENERAL PROVISIONS

11.1 STATEMENT OF FINDINGS. The Tribal Council of the Seminole Tribe of Florida finds that:

 11.1.1 The surface waters, groundwater and wetlands within the Tribe's Reservations are used by the Tribe and by tribal members for a variety of purposes and that exposure to pollutants that may be present in, or may be introduced into, the surface waters, groundwater or wetlands of the Reservations threatens the health and welfare of members of the Seminole Tribe and other persons who reside or conduct business within the Tribe's Reservations;

 11.1.2 The rights of members of the Tribe to carry on traditional cultural activities depends upon the protection of the natural environment, including the quality of surface waters, groundwater and wetlands;

 11.1.3 The discharge of pollutants into surface waters on Tribal lands, on leased or permitted Indian trust lands, and on privately owned or controlled lands within the Tribe's Reservations could adversely affect the health and welfare of tribal members;

 11.1.4 The Tribal Council has the authority under the Tribe's

Constitution and the responsibility to tribal members to enact legislation to control sources of water pollution on all lands within the Tribe's Reservations, including privately owned or controlled lands;

11.1.5 By developing a tribal water quality regulatory program, the Tribe will be better able to ensure that, in exercising its rights to use Reservation lands for development activities to enhance the general welfare of Reservation communities, the development activities that the Tribe chooses to pursue, and those that the Tribe allows tribal members to pursue, will be environmentally sustainable;

11.1.6 Water quality in some of the surface waters of the Tribe's Reservations has been adversely affected by the discharge of pollutants from sources that are outside the boundaries of the Tribe's Reservations;

11.1.7 The Tribe has certain rights under the Water Rights Compact to influence the terms of permits issued by the South Florida Water Management District in order to protect waters flowing through the Tribe's Reservations from water pollution, as well as certain obligations to ensure that the Tribe's activities will not cause significant pollution of surface or ground waters;

11.1.8 The enactment of this Water Quality Code is fully consistent with the Tribe's rights and obligations under the Water Rights Compact.

§ **11.2 DECLARATION OF GOALS AND POLICY**

11.2.1 NATIONAL GOALS AND POLICY. The Tribal Council endorses the Congressional declaration of goals and policy in the federal Clean Water Act (33 U.S.C. § 1251), in particular:

11.2.1.1 the national goal that the discharge of pollutants into navigable waters be eliminated;

11.2.1.2 the interim national goal of water quality that provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water (commonly known as the goal of "fishable-swimmable" water quality);

11.2.1.3 the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

11.2.1.4 the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so that the goals of the Clean Water Act can be met through the control of both point and nonpoint sources of pollution.

11.2.2 TRIBAL POLICIES. In addition to the National goals and policy endorsed above, the Tribal Council declares the following tribal water quality policies:

11.2.2.1 Recognizing that economic development and environmental protection cannot be pursued in isolation but, rather, are necessarily interrelated, it is the policy of the Tribe to protect the quality of the surface waters and groundwater of the Reservations in order to support the efforts of the Tribe to pursue economic development.

11.2.2.2 Recognizing that each member of the Tribe has the right to carry on hunting, fishing and other traditional Seminole cultural practices, it is the policy of the Tribe to maintain water quality for the conservation of the habitat of culturally important fish and wildlife and for the conservation of culturally important plant life.

11.2.2.3 Recognizing that the quality of groundwater is important for many purposes, including human consumption, and recognizing that restoring the quality of groundwater after it has been contaminated is both costly and technically difficult, it is the policy of the Seminole Tribe to prohibit the

degradation of groundwater.

11.2.2.4 Recognizing that wetlands provide a variety of environmental benefits, including wildlife habitat and recharge of groundwater, it is the policy of the Seminole Tribe to ensure that the functions and values of wetlands will be protected and that when any activities that are subject to this Subtitle may result in adverse impacts on wetlands, such impacts will be considered fully prior to allowing the activities to proceed; any such adverse impacts should be avoided if practicable, and, where avoidance is not practicable, appropriate mitigation measures shall be planned and implemented.

11.2.2.5 Recognizing that the Seminole Tribe has entered into an historic Water Rights Compact with the State of Florida and the South Florida Water Management District, it is the policy of the Tribe that all tribal activities relating to water quality be consistent with the rights, entitlements and obligations of the Tribe under the Compact.

⇒ **11.3 PURPOSES.** The purposes of this Water Quality Code are:

11.3.1 to protect the health and welfare of members of the Seminole Tribe and others who reside or conduct business within the Tribe's Reservations;

11.3.2 to protect the rights of tribal members to carry on traditional cultural activities and to protect the wild plants and animals and other aspects of the natural environment that are important for carrying on traditional cultural activities;

11.3.3 to ensure that development activities that may be carried out by the Tribe to enhance the general welfare of Reservation communities, or that may be carried out by private persons pursuant to the Tribal Land Use Code, will not result in violations of Tribal water quality standards.

§ 11.4 COMPREHENSIVE WATER QUALITY PROGRAM. It is the intent of the Tribal Council to establish a comprehensive program to regulate water quality within the Tribe's Reservations. Although the regulatory program will be developed in phases, it is the Council's intent that the regulatory program ultimately will cover the full range of activities that may result in adverse impacts on water quality of surface waters, groundwater and wetlands, including both point sources and nonpoint sources of pollution.

§ 11.5 EFFECTIVE DATE. The effective date of this Code is sixty (60) days after the date of approval by the Tribal Council, except that the delegations of authority to the Commission and the Department shall take effect immediately upon enactment.

§ 11.6 DEFINITIONS. The following definitions apply for purposes of this Subtitle and the Commission's rules. In addition, the Commission's rules may include additional definitions for terms used in the rules provided that any such definition may not be inconsistent with the use of such a term in statutes or regulations administered by EPA.

 The term *the Act* means the *Clean Water Act (CWA)*, as amended, 33 U.S.C. 1251 *et seq.*, which is also known as the Federal Water Pollution Control Act (FWPCA).

 The term *best management practice (BMP)* means methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

 The term *criteria* means elements of water quality standard, expressed

as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

The term ***designated uses*** means those uses specified in water quality standards for each water body or segment whether or not they are being attained.

The term ***discharge of a pollutant*** and the term ***discharge of pollutants*** each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

The term ***effluent limitation*** means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

The term ***existing uses*** means those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

The term ***hazardous substance*** means any substance designated under 40 CFR part 116 pursuant to section 311 of the CWA.

The term ***license or permit*** means any license or permit granted by an agency of the Federal Government to conduct any activity which may result in any discharge into the navigable waters of the United States.

The term ***licensing or permitting agency*** means any agency of the Federal Government to which application is made for a license or permit.

The term ***National Pollutant Discharge Elimination System***

(NPDES) means the national program from issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

The term ***navigable waters*** means the waters of the United States, including the territorial seas.

The term ***nonpoint source*** means any source of pollutants into Reservation surface waters other than a point source.

The term ***owner or operator*** means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

The term ***person*** means an individual, association, partnership, corporation, municipality, tribal, state or federal agency, or an agent or employee thereof.

The term ***point source*** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See 40 C.F.R. §122.3).

The term ***pollutant*** means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of Section 312 of the Act; or (B) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to

facilitate production or for disposal purposes, has been approved under authority of the federal Safe Drinking Water Act or other applicable federal law, and if such Commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

The term *pollution* means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

The term *publicly owned treatment works ("POTW")* means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state, tribe or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

The term *Reservation surface waters* means waters of the United States that are located within the boundaries of the Tribe's Reservations.

The term *Section 304(a) criteria* means criteria that are developed by EPA under authority of section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on a particular aquatic species and/or human health. This information is issued periodically to the states and tribes as guidance for use in developing criteria.

The term *toxic pollutant* means any pollutant listed as toxic under section 307(a)(1) of the Act or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

The term *water quality limited segment* means any segment of a body of water where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

The term *water quality management (WQM) plan* means a tribal,

state or areawide waste treatment management plan developed and updated in accordance with the provision of sections 205(j), 208 and 303 of the Act.

The term *water quality standards (WQS)* means provisions of tribal, state or federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

The term *waters of the United States or waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadow, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

PART 12. DUTIES OF THE COMMISSION

12.1 GENERAL; DELEGATION OF AUTHORITY. The Commission is the agency of the Tribe that is charged with authority to establish policies, resolve disputes and order enforcement actions to carry out this Subtitle of the Code. The Tribal Council hereby delegates to the Commission the authority necessary to carry out these duties and responsibilities, subject to review and oversight by the Council as provided in this Subtitle and in Subtitle A of the Code.

12.2 DUTIES AND RESPONSIBILITIES. The Commission shall carry out the duties and responsibilities listed in this part.

12.2.1 WATER QUALITY MANAGEMENT PLANNING. The Commission shall exercise oversight authority over the water quality management planning activities of the Department. Each water quality management (WQM) plan that is developed by the Department shall be presented to the Commission for review and approval. If the Commission disapproves of a WQM plan, in whole or in part, the Commission shall advise the Director regarding the changes that the Commission believes should be made. In the event that the Director and the Commission are not able resolve any disagreement regarding the content of a WQM plan, the matter shall be presented to the General Counsel who will attempt to mediate a resolution of the disagreement. At the discretion of General Counsel, a disagreement may be referred to the Tribal Council for resolution.

12.2.2 PUBLIC INFORMATION AND COMMUNITY INVOLVEMENT. The Commission shall develop and carry out a program to inform tribal members and the general public about the Tribe's water quality regulatory program and to encourage community involvement in water quality management planning. The Commission's public information program shall be carried out through the Department.

12.2.3 ADOPTION OF WATER QUALITY STANDARDS. The

Commission shall exercise the authority of the Council to set water quality standards, through the development of rules in accordance with section 12.3 of this Subtitle.

12.2.4 CERTIFICATION OF COMPLIANCE WITH STANDARDS. The Commission shall exercise oversight authority over the issuance or denial of certification of compliance with water quality standards by the Director, pursuant to subsection 13.4.4 of this Subtitle. Any person aggrieved by the issuance or denial of such certification by the Director may appeal to the Commission, and any person aggrieved by an Order issued by the Commission on such an appeal may appeal to the Tribal Council. Appeals to the Commission and Council relating to certifications of compliance with water quality standards shall be governed by the procedures set out in subsection 3.6.8 of Subtitle A.

12.2.5 ISSUANCE OF PERMITS. Each permit issued by the Commission pursuant to subsection 3.5.8 of Subtitle A shall impose such conditions as may be necessary to ensure that the permit will not result in a violation of water quality standards that have been validly adopted by the Commission. Each annual report to the Council that is approved by the Commission shall include a report on the Commission's experience in exercising its existing permitting authority and shall present recommendations to the Council on whether the delegation of additional permitting authority would help to achieve the goals, policies and purposes of this Subtitle.

12.2.6 HEARINGS; ENFORCEMENT AND INQUIRY. Upon request by the Director pursuant to subsection 13.4.6 of this Subtitle, the Chairman of the Commission may issue an Order to Cease and Desist or to modify a practice that has been alleged to violate this Subtitle. Under that subsection, the Director also may issue a citation to any person for an alleged violation of this Subtitle. The Commission shall serve as the forum to conduct a hearing on any citation issued by the Director or any Order issued by the Chairman of the Commission. Any such enforcement hearing shall be conducted in accordance with this subsection.

12.2.6.1 At the hearing, the Director, or his or her

designate, will present the case to the Commission to establish that a violation has occurred and that the person cited is responsible for the violation. The Director's presentation may include the presentation of witnesses. The Director also will present a recommended Order for the consideration of the Commission, which may include corrective action to be taken by the alleged violator or by the Department with the cost charged to the alleged violator, as well as the assessment of civil penalties.

12.2.6.2 The alleged violator shall be given an opportunity to be heard, to present witnesses and to question the Director and any witnesses that may be presented by the Director. The alleged violator may be represented by legal counsel at his or her own expense.

12.2.6.3 The Commission may, in its discretion, appoint a hearing officer other than the Director or a member of the Commission to conduct the hearing on its behalf and report findings and recommended action to the Commission.

12.2.6.4 At the conclusion of the hearing, or after having received the report of the hearing officer, the Commission may:

- (a) Adopt the Order that has been recommended by the Director;
- (b) Modify the Director's recommended Order and adopt it, including such relief that the Commission deems appropriate; or
- (c) Vacate the citation.

12.2.6.5 Any Order issued by the Commission after a hearing shall include findings of fact that are supported by substantial evidence. If the alleged violator has presented evidence at the hearing to challenge the evidence presented by the Director in making the case that a violation has occurred, the Commission must conclude that the findings of fact included in its Order are supported by a preponderance of the evidence.

12.2.6.6 In addition to whatever corrective actions and/or civil penalties may be included in an Order of the Commission, the Commission also may recommend that the Director refer a matter to the General Counsel for possible referral to EPA for independent federal enforcement action. The General Counsel is charged with deciding whether or not to refer such a matter to EPA. In addition, the General Counsel is authorized to refer a matter to EPA for independent federal enforcement regardless of the action taken by the Commission after a hearing and regardless of whether the Commission has held a hearing on a matter.

12.2.6.7 If the Commission's Order includes the assessment of civil penalties, such penalties shall be assessed in accordance with the schedule of civil penalties specified in the Commission's rules. Each day on which a violation continues shall be considered a separate violation, and a separate civil penalty may be assessed for each such violation. An Order issued by the Commission may provide that civil penalties will be assessed at a specified date in the future if the violator has not taken corrective action specified in the Order by that date.

12.2.6.8 In addition to enforcement hearings on citations and Orders issued by the Chairman of the Commission, at the request of the General Counsel, the Commission shall serve as a forum in which to develop an administrative record for a matter in which the General Counsel is considering asking the EPA to pursue independent enforcement. Hearings on such matters will be known as "inquiry hearings." The Chairman of the Commission is authorized, at the request of the General Counsel or the Director, to issue a subpoena to any person within the Tribe's jurisdiction to appear as a witness at any such inquiry hearing, provided that the hearing shall be no less than ten (10) days from the date that the subpoena is served on the person.

12.2.7 EXCLUSION FROM RESERVATIONS. In the case of any violator who is not a member of the Seminole Tribe of Florida, if the violator fails to comply with an order of the Commission, the Commission may hold a second hearing to determine whether such refusal to comply constitutes such a

substantial threat to the health, welfare or safety of members of the Tribe that the violator should be prohibited from entering any of the Tribe's Reservations. Such a hearing shall follow the procedural requirements of subsection 12.2.6. If the Commission finds that exclusion is warranted, it may issue an order prohibiting the violator from entering any or all of the Tribe's Reservations. Such an order may be appealed to the Tribal Council pursuant to section 12.4 of this Subtitle.

12.2.8 REPORTS. The Commission shall exercise oversight authority over the water quality management reports prepared by the Department for submission to the Tribal Council and to EPA, including the annual report to the Council required by subsection 13.4.7. The Commission shall review each water quality management report that is developed by the Department. Upon approval by the Commission, each report to EPA shall be submitted to the Tribal Council for review, and shall be deemed approved by the Tribal Council unless, within fifteen (15) days after submission to the Council, the Tribal Chairman informs the General Counsel that the report will be considered by the Tribal Council in session. If the Commission disapproves of a report, in whole or in part, the Commission shall advise the Director regarding the changes that the Commission believes should be made. In the event that the Director and the Commission are not able to resolve any disagreement regarding the content of a report, the matter shall be presented to the General Counsel who will attempt to mediate a resolution of the disagreement. At the discretion of the General Counsel, a disagreement may be referred to the Tribal Council for resolution. Upon approval by the Tribal Council, a report to EPA shall become an official WQM report of the Tribe, and the Director shall transmit the report to EPA.

➤ **12.3 SUBSTANTIVE RULES; WATER QUALITY STANDARDS.** The Commission shall set water quality standards by issuing substantive rules in accordance with this section.

12.3.1 CONTENT OF RULES. The primary purpose for the issuance

of substantive rules by the Commission is to set water quality standards. In addition, the Commission is authorized to include in its rules any provisions that the Commission deems necessary or advisable to carry out this subtitle, including but not limited to:

12.3.1.1 a schedule of civil penalties that may be imposed on violators by the Commission after a hearing pursuant to subsection 12.1.5;

12.3.1.2 a procedure through which an applicant for a federal license or permit to conduct any activity that may result in a discharge to surface waters, including wetlands, may apply to the Director for certification, pursuant to section 401 of the Clean Water Act, that any such discharge will comply with the Tribe's water quality standards and other requirements of the Clean Water Act; and

12.3.1.3 a program for protecting the quality of groundwater under the jurisdiction of the Tribe, in accordance with part 18 of this Subtitle.

12.3.2 PROCEDURE FOR DEVELOPMENT OF RULES. The Commission shall use an open procedure for the development of rules so that Tribal members and others who reside on or do business within the Tribe's Reservations, as well as other persons whose interests may be affected by the Tribe's adoption of water quality standards, will have opportunities to understand the rules and to make their views known to the Commission during the rule-making process. In order to inform and involve the affected public, the Commission may take appropriate steps in addition to the steps specified in this subsection. All required publication of notice shall include publication in the Seminole Tribune or such other news media as the Tribal Chairman may direct and posting in accordance with paragraph 3.5.5.1 of Subtitle A. In addition, the Commission shall develop an "interested persons" list (individuals and organizations), in accordance with section 25.4(b)(5) of EPA's regulations, for the distribution of notice at appropriate points in the development of the rules. If the Council enacts an administrative procedure code that establishes requirements for the

development of rules by Tribal agencies, the Commission shall comply with any such requirements in addition to complying with the requirements set forth in this section. Except in the case of interim rules under paragraph 12.3.2.13, in the development or revision of its rules the Commission shall take the following steps:

12.3.2.1 Publish notice of its intent to develop rules to set water quality standards, including a non-technical explanation of what it means to set water quality standards. The notice of intent shall explain how interested individuals and organizations can become included in the interested persons list.

12.3.2.2 Publish notice of the availability of proposed rules, including distribution to all persons included in the interested persons list. The notice shall include a non-technical explanation of the proposed rules and may also include other information as suggested in section 25.4(c) of EPA's regulations. The notice shall provide a contact person for further information, shall explain how persons can obtain or review a copy of the proposed rules and other relevant documents, and shall invite persons to submit written comments to the Commission. The notice shall provide the dates and locations of each public meeting required under paragraph 12.3.2.3, which shall be scheduled no less than thirty (30) days after the date of the notice. The Commission may decide to change the date and location of any such meeting, provided that a notice of any such change is published at least thirty (30) days prior to the rescheduled date of the meeting. The notice may include the date and location of the public hearing required under paragraph 12.3.2.9, below. If the Commission does include notice of the hearing with the notice of availability of the proposed rules, the notice specified in paragraph 12.3.2.7, below, may be omitted. The Commission may decide to change the date and location of the hearing, provided that notice of any such change shall be published at least 45 days prior to the rescheduled date of the hearing.

12.3.2.3 Hold at least one public community meeting on each of the following Reservations -- Big Cypress, Brighton, Hollywood and Immokalee -- to explain the proposed rules and to accept oral comments on the

proposed rules, provided that if the proposed rules, or rule amendments, would not be applicable to a Reservation, the Commission will not be required to hold a public meeting on that Reservation.

12.3.2.4 Accept written comments on the proposed rules for an initial comment period of not less than forty (40) days after the publication of notice of availability. The Commission shall maintain a docket of all written comments submitted, which shall be made available for public inspection.

12.3.2.5 Consider comments that are submitted, in consultation with the Director.

12.3.2.6 Provide policy guidance to the Director regarding comments made in the community meetings or submitted in written form and consult with the Director as necessary regarding revisions to be made in the proposed rules. The Commission may make such changes as it deems appropriate before holding the required public hearing.

12.3.2.7 Publish notice that a hearing will be held in accordance with EPA regulations (40 C.F.R. Part 25 and Section 131.20), at least forty-five (45) days prior to the date of the hearing.

12.3.2.8 Make available the text of the proposed rules that will be considered by the Commission for adoption along with other relevant documents, no less than thirty (30) days prior to the date of the hearing. If in its judgment, considering any comments submitted on the proposed rules within the initial comment period, the Commission determines that there is no need to make substantial changes in the proposed rules, the text of the proposed rules to be considered in the public hearing may be unchanged from the text made available with the notice of availability in paragraph 12.3.2.2, above. If the Commission determines that substantial changes should be made in the proposed rules, the text of the revised proposed rules shall be made available at least 30 days prior to the date of the hearing. The text of the proposed rules shall be accompanied by a preamble that will include a "responsiveness

summary" in accordance with section 25.8 of EPA's regulations. This responsiveness summary shall include a summary of comments on the proposed rules received from the public during the initial comment period and the Commission's responses to comments.

12.3.2.9 Hold a hearing in accordance with Sections 25.5 and 131.20 of EPA's regulations. The Commission will allow for a question and answer session in the hearing as well as allowing time for the presentation of testimony. The Commission shall have a transcript of the hearing prepared within a reasonable period of time after the hearing. Written comments shall be accepted by the Department for at least fifteen (15) after the date of the hearing, and this comment period may be extended by the Chairman of the Commission. Copies of the transcript shall be made available for public inspection.

12.3.2.10 Consider testimony and other comments. At a scheduled meeting, the Commission shall consider the testimony and comments made at the hearing. As provided in part 13 of this Subtitle, the Department will prepare a draft of final rules for the Commission's consideration. The Department's draft will include a revised preamble, including a "responsiveness summary," which takes into account any comments made at the hearing or submitted in writing after the hearing. The Commission may make changes in the final rules and responsiveness summary as appropriate. The Commission may make any such changes itself during the meeting or it may ask the Director to make the changes in accordance with the Commission's guidance.

12.3.2.11 Approve the final rules. Approval may take place in the scheduled meeting of the Commission during which testimony and comments made at the hearing are considered or at a subsequent meeting, depending on the extent to which the Commission decides that the rules should be changed in response to testimony and comments.

12.3.2.12 Submit the final rules to the Council at least fifteen (15) days prior to a scheduled Council meeting.

12.3.2.13 Interim rules. In the event that the Commission, in consultation with the General Counsel, determines that there is an immediate need for rules to be adopted or revised, the Commission may adopt interim rules, which shall take effect upon approval by the Tribal Council. The adoption of interim rules may be used for any aspect of the Commission's rule-making authority set out in subsection 12.3.1 except for the adoption or revision of water quality standards. In the adoption of interim rules, the Commission shall follow essentially the same steps as outlined above except as provided in this paragraph. In the step corresponding to paragraph 12.3.2.2, the rules shall be called "interim" rather than "proposed" rules. After the publication of notice of availability of the interim rules, the interim rules shall be submitted to the Tribal Council as in subsection 12.3.3. If the Council approves the interim rules, they shall take effect at that time. The Commission will follow the remaining steps in the process to receive comments and testimony, including conducting at least one public meeting on each Reservation within which the interim rules are applicable. The Commission may hold a public hearing, but such a hearing is not mandatory for interim rules. After considering public comments, and making any revisions that the Commission deems appropriate, the interim rules shall be submitted again to the Tribal Council for its approval in accordance with subsection 12.3.3.

12.3.3 APPROVAL OF RULES BY COUNCIL. Final rules adopted by the Commission must be submitted to the Council for ratification at a regular or special meeting of the Council. If the Council so directs, the final rules shall be revised and resubmitted to the Council. Ratification by the Council shall constitute the adoption of water quality standards by the Tribe. After ratification by the Council, the water quality standards shall be submitted to EPA in accordance with section 130.20(c) of EPA's regulations. Water quality standards shall have the force and effect of law upon adoption by the Tribal Council.

↪ **12.4 APPEALS.** Any person aggrieved by a final action of the Commission may appeal to the Council pursuant to subsection 3.6.8. The setting

of water quality standards through the issuance of regulations by the Commission shall not be subject to appeal, but, as provided in subsection 12.2.2, such regulations shall not take effect until they have been approved by the Council.

PART 13. DUTIES OF THE DEPARTMENT

13.1 GENERAL; DELEGATION OF AUTHORITY. The Department is the agency of the Tribe that is charged with the overall administration of the Tribe's water quality management and regulatory program. The Director is the head of the Department. The Director will take appropriate actions to ensure that the Department has the technical and scientific expertise necessary to carry out its water quality responsibilities. The Tribal Council hereby delegates to the Department and to the Director the authority necessary to carry out these duties and responsibilities, subject to review and oversight by the Council as provided in this Subtitle and in Subtitle A of this Code and subject to oversight by the Commission as provided in section 12.1 of this Subtitle.

13.2 RELATIONSHIP TO COMMISSION. The Department is separate from the Commission, and neither the Commission as a whole nor any of the individual Commissioners is charged with supervisory authority over the Director or any of the employees or consultants of the Department. The Commission shall exercise oversight authority over the Department as provided in section 12.1 of this Subtitle. The Department shall provide technical and scientific support to the Commission. The Department and the Commission shall work together in cooperation to carry out their respective responsibilities under this Subtitle.

13.3 RELATIONSHIP TO GENERAL COUNSEL. The General Counsel is charged with supervisory authority over the Director and, through the Director, over the employees of the Department. In the event that the position of Director

should become vacant, the General Counsel will appoint an individual to serve as Acting Director until the position is filled in accordance with the Tribe's Personnel Policies and Procedures.

13.4 DUTIES AND RESPONSIBILITIES OF DEPARTMENT. The Department shall carry out the duties and responsibilities listed in this part. The Department will serve as the Commission's staff for the preparation of documents to be issued under the authority of the Commission.

13.4.1 WATER QUALITY MANAGEMENT PLANNING. The Department is charged with primary responsibility for carrying out water quality management planning on behalf of the Tribe. Water quality management planning shall be carried out in accordance with part 14 of this Subtitle and EPA regulations (40 C.F.R. Part 130).

13.4.2 PUBLIC INFORMATION AND COMMUNITY INVOLVEMENT. The Department will cooperate with and provide technical support to the Commission in developing and carrying out a program to inform tribal members and the general public about the Tribe's water quality regulatory program, pursuant to subsection 12.1.2 of this Subtitle. In addition, in carrying out its responsibilities for the administration of the Tribe's water quality regulatory program, the Department shall adopt and carry out a policy to encourage community involvement in water quality management planning.

13.4.3 DEVELOPMENT OF WATER QUALITY STANDARDS. The Department is charged with primary responsibility for carrying out the scientific and technical work of developing water quality standards for the Tribe's Reservations in accordance with part 15 of this Subtitle. In particular, the Department will prepare drafts of the following:

 13.4.3.1 All public notices required for the development and adoption of water quality standards;

13.4.3.2 Proposed rules for consideration at public meetings, including an explanatory preamble for any such rulemaking document;

13.4.3.3 Proposed rules for consideration at the public hearing, incorporating any revisions that the Commission determines should be made in response to comments made in any community meeting, with an explanatory preamble which includes a "responsiveness summary";

13.4.3.4 Final rules for approval by the Commission and Tribal Council, with an explanatory preamble which includes a "responsiveness summary" and an explanation of any changes that have been made from the proposed rules;

13.4.3.5 Such other documents as the Commission and the Director decide to prepare as part of the rulemaking process.

13.4.4 CERTIFICATION OF COMPLIANCE WITH STANDARDS. The Director is hereby delegated the authority to issue or to deny certification, pursuant to section 401 of the Clean Water Act, that a proposed action will not result in a violation of the Tribe's water quality standards. Any person aggrieved by the issuance or denial of certification may appeal to the Commission pursuant to subsection 3.6.8 of Subtitle A of this Code. The rules in which the Tribe's water quality standards are set out, which are to be issued following the procedure set out in section 12.2 of this Subtitle, shall specify the procedure through which persons may apply to the Director for certification.

13.4.5 CONDITIONS FOR PERMITS ISSUED BY THE COMMISSION. The Department shall provide scientific and technical support to the Commission in specifying conditions to include in any permit issued by the Commission pursuant to subsection 3.6.8 of Subtitle A of this Code to ensure that the permit will not result in a violation of the Tribe's water quality standards.

13.4.6 ENFORCEMENT. The Director is authorized to enforce this Subtitle and the Tribe's water quality standards and other provisions of the rules

issued by the Commission, as specified herein.

13.4.6.1 The Director may issue a citation to any person that the Director reasonably believes to have violated this Subtitle. Any violation of water quality standards adopted through rules issued by the Commission, and any violation of the conditions imposed by a permit to ensure compliance with the Tribe's water quality standards, shall constitute a violation of this Subtitle.

13.4.6.2 Such citation shall require the person cited to appear before the Commission on a date specified for a hearing on the violation charged in the citation. The citation shall inform the person cited of the range of actions that could be taken by the Commission if it determines after a hearing that a violation has in fact occurred, including: (a) assessment of civil penalties; (b) referral to EPA for possible federal enforcement action; and (c) in the case of nonmembers of the Tribe, the possibility of exclusion from the Tribe's Reservations.

13.4.6.3 The date for the required appearance shall be a least five (5) days and not more than sixty (60) days from the date of the citation, unless the Director and the person cited (or that person's representative) agree to another date or settle the matter, and so inform the Commission prior to its next scheduled meeting.

13.4.6.4 If prior to the hearing the person cited does not voluntarily cease the activity that is alleged in the citation to be a violation of this Subtitle and the Director has reason to believe that the alleged violation constitutes a serious and ongoing threat to the health, safety or welfare of the Tribe or any member of the Tribe, the Director may apply, with or without notice to the alleged violator, to the Commission chairman who may, in his or her discretion, issue an Order on behalf of the Tribe to Cease and Desist or to modify the activity constituting the alleged violation.

13.4.6.5 The Director may seek the assistance of the Seminole Department of Law Enforcement to

(a) Deliver a copy of a Cease and Desist or Modification Order, or any Order of the Commission, to the alleged violator; and

(b) Enforce an Order to Cease and Desist or any Order of the Commission issued after a hearing as specified in Paragraph 13.4.6.2.

13.4.6.6 At any hearing specified in Paragraph 13.4.6.2, the Director, or his or her designate, will present the case to the Commission to establish that a violation has occurred and that the person cited is responsible for the violation. The Director also will present a recommended Order, including proposed findings of fact, for the consideration of the Commission. Such a recommended Order may include the assessment of civil penalties in accordance with the Commission's rules.

13.4.6.7 The hearing specified in Paragraph 13.4.6.2 shall be conducted in accordance with Subsection 12.1.6 of this Subtitle.

13.4.7 REPORTS. The Director is responsible for the preparation of water quality management reports prepared by the Department for submission to the Tribal Council and to EPA. Each water quality management report that is developed by the Department shall be prepared in consultation with the Commission and shall be presented to the Commission for review and approval. Each water quality management report that is developed by the Department for submission to EPA shall be presented to the Commission for review and approval thirty (30) days prior to the date on which the report is due to be submitted to EPA. In addition, the Department shall prepare an annual report to the Council. Each annual report to the Council may include a discussion of any issue that the Director believes should be brought to the attention of the Council, whether or not any such issue is required to be included in, or is appropriate for inclusion in a report to EPA. The annual report to Council need not repeat the discussion of any issue that is adequately covered in a report to EPA. Any disagreement

between the Director and the Commission regarding the content of a report shall be resolved in accordance with subsection 12.2.7 of this Subtitle.

PART 14. WATER QUALITY PLANNING AND MANAGEMENT

14.1 WATER QUALITY MONITORING. To the extent that resources permit, the Department shall carry out a water quality monitoring programs in accordance with EPA regulations (40 C.F.R. section 130.4). Monitoring and analysis activities shall be performed in accordance with EPA's quality assurance/quality control guidance.

14.2 CONTINUING PLANNING PROCESS. The Department shall establish and maintain a continuing planning process as described in section 303(e)(3)(A) through (H) of the Clean Water Act and in accordance with EPA's regulations (40 C.F.R. section 130.5). The continuing planning process shall include:

 14.2.1 A process for developing effluent limitations and schedules of compliance;

 14.2.2 a process for incorporating elements of applicable areawide waste treatment plans under section 208 of the Act and applicable basin plans under section 209 of the Act;

 14.2.3 A process for developing total maximum daily loads and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act;

 14.2.4 A process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision;

 14.2.5 A process for assuring adequate authority for cooperation among various agencies of the Tribe in the implementation of the Tribe's water

quality management program;

14.2.6 A process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act;

14.2.7 A process for assuring adequate controls over the disposition of all residual waste from any water treatment processing;

14.2.8 A process for developing an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act; and

14.2.9 A process for determining the priority for the issuance of permits under section 402 of the Act (the National Pollutant Discharge Elimination System).

14.3 AREAWIDE WASTEWATER TREATMENT MANAGEMENT. Under section 208 of the Act, Indian tribes treated as states are required to identify and designate areas within their jurisdiction that have substantial water quality control problems and to develop and implement an areawide waste treatment management plan for each such area. This involves designating an areawide planning agency and one or more waste treatment management agency for each such area.

14.3.1 DESIGNATION OF AGENCIES. The Department is designated the areawide planning agency for the all of the Tribe's Reservations. The Utilities Department of the Seminole Tribe of Florida is designated the wastewater treatment management agency for all of the Tribe's Reservations. For aspects of water quality management other than waste water treatment, the Department is designated the management agency.

14.3.2 REPORT TO COUNCIL. In each annual report to the Council the Department will advise the Council on whether there is a need to designate

any area of any of the Tribe's Reservations as an area having substantial water quality control problems. In the event that such an area is identified, the Department's report will contain recommendations as to which agencies should be designated the areawide planning agency and the waste treatment management agency.

⇒ **14.4 WATER QUALITY MANAGEMENT (WQM) PLANS.** The Department is responsible for the preparation of water quality management (WQM) plans in accordance with sections 208 and 303(e) of the Act and EPA regulations (40 C.F.R. section 130.6).

14.4.1 PURPOSE OF WQM PLANS. WQM plans are used to focus water quality management activities on priority point and nonpoint water quality problems and to develop alternative solutions and recommended control measures.

14.4.2 ELEMENTS OF WQM PLANS. The elements that are required to be included in WQM plans are set out in EPA's regulations (40 C.F.R. section 130.6). These elements are summarized below:

14.4.2.1 Total maximum daily loads (TMDLs), in accordance with sections 303(d) and (e)(3)(C) of the act and section 130.7 of EPA's regulations;

14.4.2.2 Effluent limitations, including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and section 130.5 of EPA's regulations;

14.4.2.3 Municipal and industrial waste treatment, including the identification of needed treatment works, programs to provide necessary financial arrangements for such treatment works, and priorities and schedules for construction of such treatment works;

14.4.2.4 Nonpoint source management and control, including regulatory programs, non-regulatory programs and best management practices (BMPs), in accordance with section 130.6(c)(4) of EPA's regulations;

14.4.2.5 Management agencies that are charged with responsibility for carrying out WQM plans;

14.4.2.6 Implementation measures that are necessary to carry out WQM plans;

14.4.2.7 Dredge or fill program, in accordance with section 208(b)(4)(B) of the Act;

14.4.2.8 Basins plans, any relationships between a WQM plan and a basin plan under section 209 of the Act; and

14.4.2.9 Ground water programs, in accordance with section 208(b)(2)(K) of the Act.

PART 15. WATER QUALITY STANDARDS

§ 15.1 **DEVELOPMENT OF STANDARDS.** Water quality standards shall be developed by the Department and the Commission through the issuance of rules in accordance with Section 12.3 of this Subtitle and in accordance with Part 131 of EPA's regulations. The Tribe's water quality standards shall consist of a designated use for each water body, or portion of a water body, within the Tribe's Reservations and water quality criteria designed to protect the designated uses. The Commission's rules may include appropriate provisions for mixing zones and variances. Wetlands are waters under the Clean Water Act, and designated uses shall be established for wetlands. In developing water quality standards for wetlands, the Department and the Commission shall consider the adoption of special provisions, in accordance with Part 16 of this Subtitle, in addition to complying with the requirements of this Part.

15.1.1 DESIGNATED USES. Through the issuance of its rules, the Commission shall establish designated uses for each water body on each of the Tribe's Reservations. In establishing designated uses, the Department and Commission shall take into consideration the use and value of water bodies for tribal members and other persons who live or work on the Tribe's Reservations. As required by section 131.10(i) of EPA's regulations, designated uses shall reflect the uses that are actually being attained. In addition, as required by section 131.10(b) of EPA's regulations, the Department and Commission shall take into account the designated uses of downstream waters outside of the Tribe's jurisdiction.

15.1.1.1 Water bodies within the Tribe's Reservations may be classified in the Commission's rules according to the following designated uses:

- Class 1. public water supplies;
- Class 2. protection and propagation of shellfish;
- Class 3. protection and propagation of fish and wildlife; recreation in and on the water;
- Class 4. agricultural purposes; and
- Class 5. navigation and industrial purposes.

15.1.1.2 The Commission's rules may establish sub-categories of these classes, as may be appropriate for each Reservation. In addition, the Commission's rules may establish different classes of designated uses for wetlands, in accordance with Part 16 of this Subtitle.

15.1.2 WATER QUALITY CRITERIA. The Department shall development narrative and numeric water quality criteria to protect the designated uses of waters of the Reservations. In establishing numeric criteria, the Department shall make use of EPA's section 304(a) Guidance or other scientifically defensible methods. In accordance with section 303(c)(2)(B) of the Act relating to criteria for toxic pollutants, the Department will review the list of

toxic pollutants for which EPA has published guidance and determine whether the presence or discharge of any of these pollutants in reservation surface waters could reasonably be expected to interfere with designated uses specified in the Commission's rules. If the Department finds that any listed toxic pollutant may interfere with designated uses, the Department shall develop criteria for inclusion in the Commission's rules at least as stringent as criteria specified in EPA's published guidance. The Department may propose to adopt numeric or narrative criteria that have been adopted by the state of Florida if the Department makes an independent determination that such criteria would adequately protect the interests of the Tribe and its members.

15.1.3 ANTIDegradation Policy. The Commission's rules shall include an antidegradation policy that is consistent with section 131.12 of EPA's regulations. The antidegradation policy shall ensure that existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Where the quality of waters is better than necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Tribe finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Tribe's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Tribe shall assure adequate water quality to protect existing uses fully.

15.2 ADOPTION OF STANDARDS. The water quality standards developed by the Department and the Commission through the issuance of rules pursuant to section 12.3 of this Subtitle shall be considered adopted, and shall become the Tribe's water quality standards, upon approval by the Council.

15.3 SUBMITTAL TO EPA. Upon approval by the Council, the Tribe's water quality standards shall be submitted to the Regional director of EPA for

approval, in accordance with section 131.20(c) of EPA's regulations.

§ 15.4 TRIENNIAL REVIEW. The Department and the Commission shall conduct a review of the Tribe's water quality standards at least once every three years. In conducting such a review, the Department and the Commission shall follow essentially the same procedure as in issuing rules for the development of the standards. Such a review shall include at least one public community meeting on each of the following Reservations -- Big Cypress, Brighton, Hollywood, and Immokalee -- and at least one public hearing.

PART 16. SPECIAL PROVISIONS RELATING TO WETLANDS

§ 16.1 WETLANDS ARE "RESERVATION SURFACE WATERS". Wetlands provide a wide array of functions that are beneficial for people, plants and animals, and the Clean Water Act includes provisions to protect wetlands from destruction or degradation. As defined in section 11.6 of this Subtitle, the term "reservation surface waters" includes "wetlands," just as the term "waters of the United States" as defined in EPA's regulations (40 C.F.R. § 122.2) includes "wetlands." Accordingly, the Commission shall include water quality standards for wetlands in its rules issued under section 12.3 of this Subtitle. Even though wetlands are considered to be surface waters, they are in certain important ways different from other kinds of surface waters. This Part provides guidance for the Commission and the Department in fashioning special provisions to reflect these differences in the development of Tribal water quality standards.

§ 16.2 DESIGNATED USES. As for all other surface waters, water quality standards for wetlands must consist of designated uses and water quality criteria to ensure that the designated uses are attained. Because the attributes of wetlands are significantly different from the attributes of other surface waters, the Commission is authorized to establish a system of designated uses for wetlands that is different from the system established for other surface waters.

The Commission may do this either by establishing sub-categories of the uses that apply to other surface waters or by establishing a separate classification system based on wetland type and/or beneficial use (function and value). In developing a use classification system for wetlands, the Commission shall consider the functions and values of different types of wetlands, including the following: groundwater recharge/discharge; flood flow alteration; sediment stabilization; sediment/toxic retention; nutrient removal/transformation; wildlife diversity/abundance; aquatic diversity/abundance; recreation.

16.2.1 EXISTING USES. As for all other surface waters, designated uses shall include those uses that are presently being attained (40 C.F.R. § 131.10(i) as well as "existing uses" as defined by EPA (40 C.F.R. § 131.3(e)), that is, "those uses actually attained in the water body on or after November 28, 1975." In accordance with EPA regulations, however, to the extent that any wetland in existence as of November 28, 1975 had been converted to cropland prior to December 23, 1985, and is a "prior converted cropland" as defined by the Soil Conservation Service in its National Food Security Act Manual, such a former wetland is no longer considered to be included within "reservation surface waters" and thus is not covered by the Clean Water Act.

16.2.2 ATTAINMENT OF NATIONAL GOALS. As for all other surface waters, designated uses for wetlands must meet the "fishable-swimmable" goals set out in section 101(a)(2) of the Clean Water Act (see section 11.2.1 of this Subtitle) unless a use attainability analysis shows that these goals cannot be achieved. Many wetlands are generally not suitable for recreation in and on the water because, for example, they do not have sufficient water during certain seasons of the year. The Department shall conduct generic use attainability analyses for classes or types of wetlands within the reservations in order to determine whether certain recreational uses are attainable (see 40 C.F.R. § 131.10(g)(2)). Wherever the "fishable-swimmable" goal uses are attainable, the Commission shall designate these uses, even where attainment may be seasonal.

§ **16.3 WATER QUALITY CRITERIA.** The Commission shall adopt narrative

and numeric water quality criteria as appropriate to protect wetland functions and values.

16.3.1 NARRATIVE CRITERIA. Narrative criteria are likely to be particularly important because many impacts on wetlands cannot be adequately addressed by numeric criteria. Impacts may result from the discharge of chemicals for which no numeric criteria have been adopted, from nonpoint sources of pollutants, and from activities that alter the physical and biological aspects of water quality, rather than the chemical aspects. The Commission shall adopt narrative water quality standards for wetlands that describe the characteristics of the biological community that must exist in a wetland in order to meet a particular designated aquatic life/wildlife use. In addition, the Commission shall consider the adoption of narrative criteria to regulate impacts on the biological integrity of wetlands due to physical and hydrological modifications.

16.3.2 NUMERIC CRITERIA. If the Commission designates any wetlands as sources of drinking water, numeric criteria shall be adopted to protect human health. The Department shall evaluate the groundwater recharge function of wetlands within the reservations and shall advise the Commission if the adoption of numeric criteria to protect human health would be appropriate. The Commission shall adopt numeric criteria as appropriate for the protection of aquatic life and wildlife. The Commission shall evaluate the extent to which tribal members and other persons eat aquatic species and other wildlife species that are dependent upon wetlands and shall advise the Commission if the adoption of numeric criteria to protect human health would be appropriate. In adopting numeric criteria, the Commission may develop scientifically defensible site-specific criteria if reservation-wide or national criteria would be inappropriate.

16.4 ANTIDegradation. The antidegradation policy set out in section 15.1.3 of this Subtitle applies to wetlands, but this shall not operate to prohibit the discharge of dredged or fill material into a wetland if a permit has been

issued under section 404 of the Clean Water Act. Rather, a discharge of dredged or fill material into a wetland pursuant to a section 404 permit will not violate the Tribe's antidegradation policy if the discharge does not result in a "significant degradation" to the aquatic ecosystem in accordance with EPA's section 404(b)(1) guidelines (40 C.F.R. § Part 230). The Commission's rules shall include guidance for tribal members and others on the application of the Tribe's antidegradation policy to wetlands.

PART 17. NONPOINT SOURCE POLLUTION CONTROL PROGRAM

§ **17.1 DEVELOPMENT OF PROGRAM.** The Department shall be responsible for the development of a nonpoint source pollution control program (NPS program) which shall be adopted by the Commission through the issuance of rules in accordance with section 12.3 of this Subtitle and Part 130 of EPA's regulations (40 CFR 130).

17.1.1 PURPOSE OF NPS PROGRAM. The NPS program shall be used to address and regulate nonpoint sources of pollution within the Tribe's Reservations including, but not limited to, surface water runoff associated with agricultural, silvicultural, urban stormwater and construction related activities. The rules and practices set forth within the NPS program shall constitute the standard by which the Commission shall approve or deny permits for new development activities pursuant to subsection 3.5.8 of Subtitle A and shall be used as a guideline by the Department in reviewing and addressing existing sources of pollution.

17.1.2 ELEMENTS OF NPS PROGRAM. The elements required to be included within the NPS program shall generally follow the guidelines set forth in Section 319 of the Clean Water Act (33 U.S.C. 1329). The program shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the Commission has selected as the means to control nonpoint source pollution. At a minimum, the rules developed by the Department and promulgated by the Commission shall include the following:

17.1.2.1 Identification of BMPs, with consideration given to the impact these BMPs will have on surface and ground water quality;

17.1.2.2 Identification of needed implementation programs, including the education, technical, enforcement and financial assistance programs to be used;

17.1.2.3 Implementation milestones, including schedules outlining when certain BMP regulations are to be developed or when water quality improvements are expected.

☞ **17.2 IMPLEMENTATION - NEW CONSTRUCTION.** The Commission, upon issuing any permit pursuant to subsection 3.5.8 of Subtitle A for new development activities shall require compliance with the standards and practices set forth in the NPS program. When necessary, these standards shall be imposed as conditions to the permit, violations of which are subject to the enforcement provisions of subsection 13.4.6 of this Subtitle.

☞ **17.3 IMPLEMENTATION - EXISTING NONPOINT SOURCES OF POLLUTION.** In the Director's discretion, specific nonpoint sources of pollution existing before the promulgation of the Tribe's water quality standards shall be required to meet the provisions of this Subtitle. In all cases, the Director shall first make a determination that the existing nonpoint source is detrimental to the general welfare of the Reservation communities and inconsistent with the development of an effective and comprehensive water quality program. An existing nonpoint source of pollution identified by the Director under this subsection shall be required to obtain a permit pursuant to subsection 3.5.8 of Subtitle A. The Director's determination that an existing nonpoint source should be required to

obtain a permit is subject to review by the Commission. Any person aggrieved by a final action of the Commission may appeal to the Council pursuant to subsection 3.6.8 of Subtitle A.

17.3.1 PHASE IN FOR EXISTING NONPOINT SOURCES. In recognition that many existing activities may be in conflict with the goals of this Section, and to recognize the rights of tribal members in carrying on these activities, a "Schedule for Compliance" shall be developed by the Director to mitigate harsh impacts that immediate imposition of these standards may produce. The Schedule for Compliance shall be incorporated within the permit by the Commission as a condition to continuing operation. Failure to meet this schedule subjects the permit holder to the enforcement provisions of subsection 13.4.6 of this Subtitle.

17.4 REVIEW OF PROGRAM. The Department and the Commission shall have authority to review and revise the NPS program as deemed necessary. In no event shall review of the NPS program be conducted less than once every three years. Such review shall include at least one community meeting on each of the following Reservations -- Big Cypress, Brighton, Hollywood and Immokalee. The review of the NPS program may be carried out in conjunction with the triennial review of the Tribe's water quality standards which is required by section 15.4 of this Subtitle.

PART 18. GROUNDWATER PROTECTION

[Reserved]

Note: Subtitle B of the Tribal Water Code was originally adopted by the Tribal Council of the Seminole Tribe, in Ordinance No. C-95-94, December 10, 1993, and became effective on that date. Subtitle B was amended by the Tribal Council, in Resolution No. C-216-94, May 19, 1994, and the amendments became effective on that date. As the note following Subtitle A of the Tribal Water Code indicates, on January 12, 1995, the Tribal Council adopted Resolution C-91-95,

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enacting amendments to Subtitle A of the Tribal Water Code. That Resolution did not amend Subtitle B, and thus this codification of Subtitle B indicates that it was most recently amended in May 1994. In this Codification, however, one typographical error has been corrected, in the definition of the term "water quality management plan."

PART 19. TRANSPORTATION SAFETY PERMITS

19.1 FINDINGS AND GOALS. Tribal officials have observed the use of roads within the boundaries of the Seminole Reservations for the transport of wastewater treatment by-products generated by off-Reservation wastewater treatment facilities. The Seminole Tribe of Florida finds that the unregulated transport of such by-products within the boundaries of the Reservations, and the final disposal of such by-products in certain locations upstream from Reservation waters, poses a threat to the water resources of the Seminole Reservations and the health and safety of the Tribe and its members. It is the intent of the Tribe to regulate the transport of such by-products occurring within the boundaries of the Reservations in a manner which ensures safe transport and disposal practices and thereby prevents violations of Tribal Water Quality Standards. A Tribal permit program shall require vehicle owners or operators to apply for a permit authorizing the transport of wastewater by-products within the boundaries of the Seminole Reservations. The permit application process shall be designed to prevent the occurrence of spills on Reservation lands and to monitor final off-Reservation disposal practices with regard to wastewater by-products.

19.2 PERMIT REQUIREMENT. Any motor vehicle which weighs in excess of 2,500 pounds when loaded and which is used on roads within Reservation boundaries to transport "sewage sludge" as regulated by federal law pursuant to section 405 of the Clean Water Act or "domestic wastewater residuals" as regulated by Florida law pursuant to Chapter 17-640 of the Florida Administrative Code, must possess a Tribal Transportation Safety Permit to be issued by the Commission. No such vehicle without a permit shall be authorized to use roads within the boundaries of the Reservations.

19.3 APPLICABILITY. The permit requirements of this section apply to any owner or operator of a vehicle described in subsection 19.2 of this section. The owner and/or operator of any vehicle found to be in violation of the permit requirement set forth in this section may be held liable for such violation and

may be subject to civil penalties and/or exclusion from the Seminole Reservations by action of the Director as set forth in subsection 19.9.1 Violations, below.

19.4 DELEGATION OF AUTHORITY TO COMMISSION AND DIRECTOR. The Tribal Council delegates to the Commission the authority to carry out this Part. The Commission may delegate to the Director the authority to administer the permit application process and to make recommendations to the Commission regarding the decision to grant or deny a permit.

19.5 PROCEDURAL RULEMAKING AUTHORITY OF COMMISSION. Pursuant to Subtitle A of the Tribal Water Code, the Commission has authority to establish procedural rules governing the application process for transportation safety permits. Such rules shall be effective immediately upon the date of issuance.

19.6 APPLICATION REQUIREMENTS. The applicant must provide sufficient information in the application to demonstrate to the satisfaction of the Commission that the proposed activity will not result in harm to the water resources of the Reservations or to the health or safety of the Tribe and its members and that such activity is consistent with the purposes of the Tribal Water Quality Code (Subtitle B).

19.6.1 MINIMUM INFORMATION. All applicants for permits must, at a minimum, provide the following information: (1) proof that each vehicle for which a permit is sought is in compliance with applicable vehicle safety codes imposed by the state in which such vehicle is registered; (2) proof that the wastewater by-products contained in each vehicle for which a permit is sought are in compliance with applicable State and federal laws and regulations; (3) copies of records of the analysis of wastewater by-products, including records indicating the extent to which the wastewater byproducts contain the following pollutants: (a) arsenic; (b) cadmium; (c) chromium; (d) copper; (e) lead; (f)

mercury; (g) molybdenum; (h) nickel; (i) nickel; (j) selenium; (i) zinc; (4) proof that the final disposal of the contents of each vehicle for which such permit is sought will be performed in compliance with applicable State and federal laws and regulations; and (5) specific information regarding the geographical location of all disposal sites used by the owner or operator of the vehicle for which such permit is being sought.

19.6.2 STANDARDIZED APPLICATION FORMS. The Director shall prepare standardized forms for use in making the applications required under this section, subject to the approval of the Commission.

☞ **19.7 PERMIT LIMITATIONS**

19.7.1 NON-TRANSFERABLE. Permits issued by the Commission and the Department pursuant to this section will extend authorization only to the vehicle specified in the issued permit and such permit may not be transferred for use by another vehicle. If the Commission's rules so provide, the owner or operator of a fleet of vehicles may file a single application covering an entire fleet, provided the application contains sufficient information for the Commission to treat each vehicle separately.

19.7.2 ONE-YEAR PERMIT PERIOD. Permits issued by the Commission pursuant to this section will extend authorization to the vehicle specified in the permit for a period not to exceed one year, including any period for which a temporary permit is issued by the Director pursuant to subsection 19.8 below. The Commission may issue a permit for less than one year in cases where the Commission determines that a shorter authorization period is required to protect the health or safety of the Tribe and its members.

☞ **19.8 TEMPORARY PERMITS ISSUED BY DIRECTOR.** The Director is authorized to issue temporary permits in situations where the Director determines that the activities of the applicant will not result in harm to the health

or safety of the Tribe or to the water resources of the Reservation and that there exists a substantial likelihood that the Commission will grant a permit to the applicant. The temporary permit shall take effect on the date it is issued by the Department and shall automatically expire 60 days from the date of its issuance or on the date the Commission makes a decision to grant or deny the permit, whichever occurs first.

19.9 DISPLAY OF PERMITS. Any permit issued to a vehicle pursuant to this section shall contain information which specifically identifies the permitted vehicle and such permit shall be visibly displayed on the vehicle at all times it is within the Reservation in a manner to be prescribed by the Commission or the Director.

19.9.1 ENFORCEMENT. The Director is authorized to enforce this section as part of the Tribal Water Quality Code (Subtitle B), as set forth in Chapter A, Part 4 of the Water Quality Rules, except that where the Director finds that a violation of the permit requirement imposed by this section, or the violation of the terms of a permit, pose an immediate threat to the water resources of the Reservations, or the health or welfare of the Tribe and its members, the Director is authorized to issue to any violator, on behalf of the Tribe, a Temporary Order to Cease and Desist, and the Director has authority to take immediate action to exclude the violator from entering the Reservation without a permit. The Director may seek the assistance of the Seminole Department of Law Enforcement to enforce a Temporary Order to Cease and Desist.

19.9.2 LIMIT ON TEMPORARY ORDERS. The Director must apply to the Commission Chairman for an Order to Cease and Desist within 72 hours after issuing a Temporary Order to Cease and Desist. If the Director fails to do so or if the Commission Chairman fails to issue such an order within the 72-hour time limit, the Temporary Order expires automatically.

19.9.3 RIGHT TO HEARING. Any person cited for violation of this

amendment, or subject to penalties such violation shall have a right to a hearing in accordance with Part 4, Section 4.5 of the Water Quality Rules.

19.10 APPLICATION FEE. The application fee for the owner or operator of a single vehicle shall be \$1,000. The Commission's rules may provide for an upper limit on the application fee for a fleet of vehicles. In addition, the Commission's rules may provide reductions or waiver of the application fee in appropriate circumstances.

19.11 PENALTIES. The Commission is authorized to establish a schedule of civil penalties to be assessed for violations of this section.

19.11.1 NO VEHICLE PERMIT. Any owner or operator of an unpermitted vehicle who the Director finds is using Reservation roads for the transport of "sewage sludge" or "domestic wastewater residuals" (as defined by reference in subsection 19.2 of this section), shall be excluded from the Reservation and/or subject to a fine of not less than \$5,000.

19.11.2 OTHER VIOLATIONS. Any violations of permit conditions imposed pursuant to this section, or any misrepresentation made by an applicant as part of the permit process, or any failure to act in accordance with statements made in the application subsequent to the issuance of such permit, shall be subject to a minimum fine of \$1,500 (one thousand five hundred dollars) per violation per vehicle found to be in violation, and a maximum fine of \$5,000 (five thousand dollars) per violation per vehicle found to be in violation.

19.12 APPEALS. Any person aggrieved by a final action of the Commission with respect to the issuance or denial of a Safety Transportation Permit or with respect to penalties imposed for a violation of this section may file a Notice of Appeal to the Tribal Council in accordance with the procedures set forth in Chapter A, Part 3, Section 3.5 of the Water Quality Rules.

§ **19.13 PUBLIC NOTICE.** The Commission shall take appropriate steps to notify the affected public regarding the requirements of this section. Public notice may be achieved by posting signs which contain the text of the amendment near. Such signs shall be posted near roads within close proximity to the outer boundaries of the Reservations and in other places on the Reservations, provided such signs are posted in a manner which makes them reasonably visible to persons in motor vehicles.

Note: Part 19 of the Tribal Water Code was originally adopted by the Tribal Council of the Seminole Tribe, in Resolution No. C-218-94, May 19, 1994, and became effective on that date..

**PART 20. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMITS**

[Reserved]