

Title 24

ENVIRONMENTAL POLICY

Chapter 1. Crow Tribal Landfarm Act.13

1 _____ **Short Title.** This part shall be known and may cited as the “Crow Tribal Landfarm Act”.

2 _____ **Purpose.** (1) The Legislature finds that the safe and proper management of contaminated soil to be treated by landfarming, the permitting of landfarm treatment facilities, and the siting of facilities are matters for Crow Tribal regulation and are environmental issues that should properly be addressed and controlled by the tribe.

(2) It is the purpose of this part and it is the policy of this tribe to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of contaminated soils; to establish a program of regulation over contaminated soils and the generation, storage, transportation, treatment, and disposal of contaminated soils; to ensure the safe and adequate management of contaminated soils within the boundaries of this tribe, and to authorize the department to adopt, administer, and enforce a Landfarm program.

3 _____ **Non-Landfarm Soil Treatment Facilities.** (1) The licensee of a facility that uses non-landfarm remediation techniques (thermal, land application, biopile treatment technology, or other methods approved by the department) shall obtain department approval prior to accepting any contaminated soil for treatment or storage. Any non-landfarm remediation technique must protect human health and the environment at a level commensurate with the landfarm standards provided in this subchapter.

4 _____ **Siting Standards For Landfarm Soil Treatment Facilities and One-Time Landfarms.** (1) The department may not issue a license for a landfarm facility unless it is located on a site meeting the following standards:

- (a) a sufficient acreage of suitable land must be available to manage all contaminated soils on site;
- (b) not located in a zoned residential area or other area where the facility is otherwise prohibited;
- (c) not located within any 100 year floodplain;
- (d) not located in a wetland;
- (e) located in an area that will not result in the pollution of ground and surface waters or any public or private water supply system; Specifically, treatment cells:
 - (i) must be more than 1,000 feet away from domestic water wells;
 - (ii) must be more than 500 feet away from any residential property boundary;
 - (iii) may not be located within 100 feet from the mean high water mark of surface water, or within 100 feet from the centerline of an intermittent drainage;
 - (iv) must be at least 25 feet vertical separation between the bottom of the treatment zone and the uppermost aquifer's seasonally high water level beneath the facility;
- (f) a facility may not be located within 200 feet (60 meters) of an unstable area unless the licensee demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the treatment unit and will be protective of human health and the environment;
- (g) the soil below the treatment zone must not exceed a hydraulic conductivity of 1×10^{-5} cm/sec to a depth of 3 feet, and documentation of hydraulic conductivity must be provided by a department approved methodology; and
- (h) a facility must be located and managed to allow for reclamation and reuse of the land.

(2) One-time landfarms may not be located within one mile of another landfarm facility.

5 _____ **Design Criteria For Landfarm Soil Treatment Facilities.** (1) Facilities where the soil below treatment zone (BTZ) has not been documented to meet the standards set forth in **4(1)(g)** must be constructed with a composite or synthetic barrier layer meeting the design standards of **[5] (1) and (4)**.

(2) Where the depth to the uppermost aquifer's seasonally high water level has been proven to be greater than 25 feet, but less than 50 feet, the licensee shall monitor groundwater according to a department approved plan.

(3) An intermediate or major landfarm facility must be designed to:

- (a) restrict access to the facility through the use of fences and locking gates;
- (b) establish a treatment cell slope gradient of 2% or less;
- (c) prevent the flow of storm water run-on and contain storm water run-off as follows:
 - (i) berms must be constructed around the perimeter of each treatment cell;
 - (ii) berms and other surface water run-on and run-off controls must be designed to withstand a 24-hour, 25-year precipitation event; and
 - (iii) berms must be constructed of clay or suitable material that can be compacted to prevent storm water migration; and
- (d) allow the sampling of soil and soil interstice below treatment zone ("BTZ") in a manner that protects the competency of the BTZ.

(4) Only an intermediate or major landfarm facility may accept liquid loads incapable of passing a paint filter test according to **EPA Method 9095**. Such a facility must have a surface impoundment that meets the following criteria:

- (a) the liner and berms must be designed to meet a compacted soil standard of at least 2 feet of 1×10^{-7} cm/sec hydraulic conductivity; or
 - (i) the basin and berms must be lined with synthetic fabric meeting this requirement; or
 - (ii) the basin and berms must contain a composite liner meeting this requirement;
- (b) construction of the surface impoundment liner and berms must be verified by means of construction quality control (CQC) and construction quality assurance (CQA) plans and testing for construction of these elements in accordance with submitted design specifications; and
- (c) the licensee shall submit and obtain the department's approval for CQC and CQA plans, and a final report on the construction, prior to accepting liquid waste;

(5) A soil treatment facility that stockpiles or stores contaminated soils outside of the bermed treatment cell must meet the following criteria:

- (a) there must be a specific storage area with a sufficient depth of low-permeability subsoils or liners to prevent potential migration of contaminants;
- (b) the licensee shall identify the storage area on the facility map and in the plan of operations.
- (c) the storage area must be bermed to prevent surface water run-on/run-off; and
- (d) the subsurface of any unlined storage area must be sampled upon removal of the stockpiled soil to test for contaminant infiltration;
- (e) the storage area must meet the requirements of (1) of this rule.

(6) A licensee of a minor landfarm shall restrict public access by a method approved by the department. Access may be restricted through a combination of natural and artificial barriers.

(7) A licensee of a minor landfarms shall prevent pollution of Crow Tribal waters through the use of appropriate run-on and run-off controls.

6 _____ **Application For Landfarm Facility License.** (1) An applicant for a landfarm facility license shall submit the application materials specified; any owner or operator wishing to establish a solid waste management system shall first submit an original application and 3 copies for a license to the department. The application must be signed by the person responsible for the overall operation of the facility. The department shall furnish application forms to interested persons. Such forms shall require at least the following information:

- (1) name and business address of applicant;
- (2) legal and general description and ownership status of the proposed locations, including the land owner's name and address;

- (3) documentation of ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property;
- (4) total acreage of proposed facility;
- (5) population size and centers to be served by the proposed facility;
- (6) name, address, and location of any public airports within 5 miles of the proposed facility;
- (7) location of any lakes, rivers, streams, springs, or bogs, onsite or within 2 miles of the facility boundary;
- (8) facility location in relation to the base floodplain of nearby drainages;
- (9) pertinent water quality information;
- (10) geological, hydrological, and soil information, including at least the following:
 - (a) Class II disposal facilities must submit geological, hydrological, and soil information that includes the following at a minimum:
 - (i) a hydrogeological and soils study as specified in [12];
 - (ii) types and regional thickness of unconsolidated soils materials;
 - (iii) types and regional thickness of consolidated bedrock materials;
 - (iv) regional and local geologic structure, including bedrock strike and dip, and fracture patterns;
 - (v) geological hazards including but not limited to slope stability, faulting, folding, rockfall, landslides, subsidence, or erosion potential, that may affect the design and operation of the facility for solid waste management;
 - (vi) depth to and thickness of perched ground water zones and uppermost aquifers;
 - (vii) information regarding any domestic wells within one mile of the site boundary, including well location, well depth, depth to water, screened intervals, yields and aquifers tapped;
 - (viii) an evaluation of the potential for impacts to existing surface water and ground water quality from the proposed facility for solid waste management;
 - (b) transfer station and Class III and Class IV disposal facility applications must include sufficient soils, hydrologic and geologic information so that the department can evaluate the proposed safety and environmental impact of the proposed design;
 - (c) a ground water monitoring plan or a demonstration meeting the requirements of the following must be submitted for Class IV disposal facilities:
 - (i) Ground water monitoring at a facility may be waived by the department if the facility owner or operator can demonstrate there is no potential for hazardous constituents to contaminate the uppermost aquifer.
 - (ii) No-migration petitions must be accompanied by facility specific data and studies and must be certified by a qualified ground water scientist. No-migration demonstrations must be based on:
 - (1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and
 - (2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.
 - (iii) No-migration petitions must demonstrate that ground water will not become contaminated for at least 30 years after the entire facility is closed.
 - (iv) The department may deny any no-migration petition or variance if the department determines that insufficient data and studies exist to demonstrate no potential for migration of contaminants or leachate at a facility.
 - (vii) The department may require the installation of vadose zone monitoring devices, piezometers or saturated zone monitor wells as part of a ongoing no-migration demonstration.
 - (11) present uses of adjacent lands and the owner's name and current address;
 - (12) zoning information;
 - (13) site maps and plans, drawn to a convenient common scale, that show the location and dimensions of any planned excavations, buildings, roads, fencing, access, or other structures proposed on-site;
 - (14) in addition to the above required site plan, all facilities which manage Group II waste must submit technical design specifications and a site plan that includes the following:
 - (a) the type, quantity, and location of any material that will be required for use as a daily and intermediate cover over the life of the site and facility;
 - (b) the type and quantity of any material that will be required for use as liner material or final cover, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;
 - (c) the location and depth of cut for any liners;
 - (d) the location and depths of any proposed fill or processing areas;
 - (e) the location, dimensions, and grades of any surface water diversion structures;

- (f) the location and dimensions of any surface water containment structures, including those designed to impound contaminated runoff leachate, sludge, or liquids for evaporative treatment;
- (g) the location of any proposed monitoring points for surface water, ground water quality, and explosive gases;
- (h) the location, type, and dimensions of any fencing to be placed on-site;
- (i) the final contours and grades of any fill surface after closure;
- (j) the location of each discrete phase of development;
- (k) the design details and specifications of any final cap, liner, and leachate collection and removal system, including construction quality control and assurance plans and testing for construction of these elements of design;
- (l) a location map showing all the proposed structures and areas for unloading, baling, compacting, storage, and loading, including the dimensions, elevations, and floor plans for these structures and areas, including the general process flow; and
- (m) the design details and specifications of the facility's drainage, septic and water supply systems;
 - (15) other maps, drawings related to the design or environmental impact of the proposed facility;
 - (16) name and address of individual operator;
 - (17) proposed operation and maintenance plan;
 - (18) other information necessary for the department to comply with the Crow Tribal Environmental Policy Act chapter 1, parts 1-3;
 - (19) closure and post-closure care plans; and
 - (20) Reserved.

(2) An applicant for an intermediate or major landfarm facility license shall also provide the following information for department review and approval:

- (a) information regarding liability insurance and any other insurance relating to the facility; and
- (b) technical design specifications, construction plans, and a detailed site plan that contain the following:
 - (i) the location and logs for any soil sample, test pit, boring, or well used to determine site characteristics;
 - (ii) the type, quantity and source of any material that will be used as liner and berm material, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;
 - (iii) the design and location of any proposed storage or treatment areas;
 - (iv) the design and location of any liquid containment or storage structures, including those designed to impound or recirculate run-off, leachate, or other liquids for evaporative treatment or irrigation;
 - (v) the location, dimensions, and grades of any surface water diversion and drainage structures;
 - (vi) monitoring system design specifications, and the proposed location of monitoring points for contaminant migration;
 - (vii) the location, type, and dimensions of any fencing to be placed on-site;
 - (viii) the projected final contours and grades of all treatment cells after closure;
 - (ix) the location of each discrete phase of development; and
 - (x) the design details and specifications of any septic or water supply systems.

- 7 _____ Requirements For The Operation And Maintenance of Landfarm Facilities.** (1) A person operating an intermediate or major landfarm facility within the Crow Reservation boundaries shall:
- (a) submit a quality assurance/quality control (QA/QC) plan and protocol for waste, soil and water sampling events;
 - (i) the analytical test methods must be consistent for each treatment cell and the wastes placed in the cell.
 - (ii) The Massachusetts Method for Extractable Petroleum Hydrocarbons (EPH)/Volatile Petroleum Hydrocarbons (VPH); or
 - (iii) Gasoline Range Organics (GRO)/Diesel Range Organics (DRO)/Total Petroleum Hydrocarbons (TPH) may be used for waste analysis; or
 - (iv) other Department-approved methods.
 - (b) collect background soil samples from the proposed treatment cell location(s) before contaminated soil is placed in the treatment cell, as follows:
 - (i) one composite soil sample consisting of 5 sub-samples taken from 1 to 3 feet below the treatment zone must be collected for each acre of the proposed treatment cell;

(ii) each background sample must, at a minimum, be analyzed for volatile petroleum hydrocarbons (VPH) or total petroleum hydrocarbons (TPH), depending on the method proposed for use by the facility, methyl tertiary-butyl ether (MTBE), benzene, toluene, ethylbenzene, xylene (BTEX), and naphthylene (collectively known as MBTEXN), and total RCRA metals.

Sampling and analysis shall be done according to department-approved sampling and analytical methodology;

(iii) additional analyses of background samples may be required if soils accepted for treatment may potentially have constituents not referenced in (ii), above;

(iv) sample holes must be back-filled and compacted with clean soil of the same or lower permeability of the existing soil, or bentonite;

(v) the department reserves the right to diminish the frequency of background sampling based on the applicant's demonstration that sufficient characterization has been achieved.

(2) The licensee of a facility where groundwater monitoring is required shall construct monitoring wells in accordance with [12];

(3) The licensee of a facility that is required to monitor groundwater by subchapter [5], or this rule, shall take background water samples and have them analyzed by department-approved analytical methodologies for conductivity, the constituents required in (1)(b)(ii) of this rule, and any other constituent that may be required by the department before the facility may accept contaminated soils.

(4) The department may require a licensee to conduct groundwater monitoring at a facility if contaminant migration is detected in the below treatment zone area of the treatment cell. If monitoring is required, a licensee shall submit a detection monitoring plan meeting the requirements of Subchapter 9 of this Chapter for department review and approval and then conduct groundwater monitoring pursuant to the approved plan, as follows:

(a) groundwater must be sampled for those contaminant constituents detected in the BTZ; and

(b) groundwater monitoring must continue until contaminants are no longer detected in the BTZ and/or groundwater.

(5) If groundwater monitoring indicates the presence of contaminants, the licensee shall verbally notify the department of the contaminants detected within 48-hours and provide a subsequent written sampling report to the department within 30 days.

(6) If groundwater detection monitoring indicates the presence of contaminant constituents in 2 consecutive sampling events, the licensee shall continue to monitor in accordance with the approved detection monitoring plan and within 90 days prepare and submit an assessment of corrective measures pursuant to;

(a) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under (d) of this rule, addressing at least the following:

(b) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(ii) The time required to begin and complete the remedy;

(iii) The costs of remedy implementation; and

(iv) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(ies).

(c) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted under (a-b) of this rule, the owner or operator must select a remedy that, at a minimum, meets the standards listed in (b) below. The owner or operator must notify the department, within 14 days of selecting a remedy, that a report has been placed in the operating record describing the selected remedy and how it meets the standards in (b) below.

(b) Remedies must:

(i) Be protective of human health and the environment;

(ii) Attain the ground water protection standard as specified pursuant to (5) of this rule;

(7) Once the department approves the assessment of corrective measures, the licensee shall implement the selected remedy.

(8) Before a facility may discharge storm water to tribal waters, or disturb more than one acre of ground during construction or operation, the licensees shall obtain a permit from the department.

(9) The licensee of a facility shall document the initial characterization of contaminated soils prior to application in the treatment cell as follows:

(a) the licensee shall create a waste acceptance form to document source, volume, type and concentration of contaminants within incoming soils.

Analytical documentation for incoming contaminated soils in the form of laboratory reports from a department-approved laboratory must be attached to acceptance forms;

(b) at least 1 composite sample consisting of 5 sub-samples per composite must be collected per each 200 cubic yards of contaminated soil from the same contaminant source;

(i) composite samples must be analyzed for contaminants suspected to be within the soil by analytical methodology approved by the department;

(ii) if the source of contamination within the soil is unknown, the licensee shall consult with the department for preferred analytical methodology; and

(iii) the department may reduce soil characterization sampling frequency for large volumes of soils where it has been demonstrated that the contamination is from one known source and the contaminated soils are naturally homogeneous.

(10) A licensee shall place contaminated soils that do not have analytical documentation upon arrival at the facility within a bermed treatment cell or designed stockpile area for analytical sampling and characterization.

(11) The department may require greater sampling frequency and treatability studies in cases where the contaminant may be complex or difficult to treat.

(12) Incoming volumes of contaminated soils may be placed in the treatment cell with similar types of contaminants (i.e., gasoline, diesel), however:

(a) individual volumes from particular occurrences must be segregated by treatment zone within a treatment cell; and

(b) the licensee shall create a system to identify the boundaries of the individual treatment zone undergoing treatment within the cell.

(13) The licensee of any landfarm facility shall manage each treatment zone within the treatment cell to provide the most efficient and environmentally sound remediation for the type of contaminated soil(s) undergoing treatment as follows:

(a) contaminated soil must be applied in lifts less than or equal to 1 foot;

(b) contaminated soil must be tilled twice during the first month on the treatment cell and at least monthly thereafter, when soils are not frozen;

(c) tillage must occur at the full depth of the treatment zone;

(d) cobbles, boulders, rocks or other consolidated materials and debris that may impede soil mixing and passage of air or water through the soil or damage tillage equipment must be removed and treated separately; and

(e) no more than 1600 cubic-yards of material may be treated per acre at any time.

(14) A licensee may apply liquids into the treatment cells under the following conditions:

(a) the soils undergoing treatment may not be saturated above the field capacity of the soil;

(b) liquid wastes may only be applied to soils containing similar contaminants.

(14) A licensee may use non-naturally occurring bioremediation agents only if approved by the department prior to application to the treatment zone.

(15) Reserved for permits for air when there is a potential to emit air pollutants in excess of the limits set by the Crow Tribe.

(16) The licensee of a landfarm facility shall employ best management practices to control fugitive dust emissions from the facility.

(17) In addition to baseline sampling, a licensee shall take soil treatment samples from the lower half of each treatment cell during April, July, and October, or according to an alternative schedule approved by the department.

(18) A licensee shall have treatment samples analyzed using the same methodology as was performed to determine baseline conditions.

(a) If new contaminants have been added to the treatment zone after baseline sampling, all contaminants need analysis.

(b) The department may approve alternative methodologies.

(19) The licensee shall regularly monitor the following treatment parameters and make any necessary adjustment to maintain optimum bioremediation conditions for all types of contaminated soils under treatment:

(a) organic carbon to available nitrogen to phosphorous ratio (C:N:P);

(b) moisture content;

(c) soil pH;

(d) temperature (if applicable).

(20) The licensee of an intermediate or major landfarm facility shall collect and analyze 1 composite samples per ½ acre from 1 to 3 feet below the treatment zone of the treatment cell at the end of each treatment season.

(a) Each sample must be composed of 5 sub-samples.

(b) All sub-samples must be from the same treatment cell.

(c) At least one composite sample must be taken for each treatment cell.

(d) Below treatment zone samples must be analyzed using the same methodology as was performed to determine background, or a department approved alternative.

(e) Below treatment zone sampling must be done in a manner protective to the liner of the treatment cell, and must not open a contaminant migration pathway.

(21) If contaminant migration or leaching is indicated by changes in the background chemistry of the below treatment zone:

(a) the licensee must notify the department;

(b) additional contaminated soils may not be brought to the facility without department approval;

(c) facility operations must be modified under corrective measures approved by the department until contaminant migration is no longer indicated; and

(d) the department may require the licensee to clean-up and close the facility if the licensee cannot document that contaminant migration has been corrected.

(22) The following chart defines the maximum allowable metals content in applied wastes and the treatment zone of landfarm facilities:

ELEMENT	MAXIMUM TCLP CONCENTRATION (in ppm)
Arsenic (As)	5.0
Barium (Ba)	100
Cadmium (Cd)	1.0
Chromium (Cr)	5.0
Lead (Pb)	5.0
Mercury (Hg)	0.2
Selenium (Se)	1.0
Silver (Ag)	5.0

(23) Minor landfarms may only accept or possess petroleum contaminated soils.

8. **Landfarm Facility Record Keeping Requirements.** (1) The licensee of a landfarm facility shall maintain an operating record at the facility or at an alternative location approved by the department.

(2) The licensee shall keep the operating record up-to-date and it must be available for department inspection during normal business hours or by previous arrangement. The operating record must contain the following information as it becomes available:

(a) background analytical documents for soils below the treatment zone and groundwater (if required);

(b) waste stream acceptance forms and analytical documentation;

(c) treatment zone application dates;

(d) treatment zone maintenance items, including appropriate maps and dates for:

(i) tillage events;

(ii) carbon to nitrogen to phosphorous (C:N:P) ratio and nutrient addition;

(iii) moisture content and irrigation;

(iv) soil pH and pH adjustments, if necessary;

(v) addition of bulking agents;

(vi) addition of bioremediation enhancers or amendments; or

(vii) other information relative to treatment zone maintenance;

(e) reports, dates and maps for remediation sampling events and analytical results;

(f) reports, dates and maps for below treatment zone sampling events and analytical results;

(g) groundwater sampling events and analytical results (if required);

- (h) quarterly static water level measurements (if required);
- (i) date and volume of treated soils removed from treatment cell; and
- (j) disposition and end use for treated soils.

(3) The licensee shall maintain the following information in the operating record as it becomes available and send it to the department as part of the annual report required under [13]:

- (a) dates and results of all remediation sampling events for each separate volume of contaminated soil under treatment, including generator tracking code, type of contaminant, test methodology, baseline concentration, volume being treated, and months under treatment;
- (b) dates, types and results of all treatment maintenance activities such as BTZ sampling, C:N:P monitoring, tilling, irrigation, nutrient or bulking supplementation, and other pertinent activities;
- (c) updates or changes to the site map and/or operational plan.

9. **Landfarm Facility Remediation Requirements.** (1) Contaminated soils may be considered remediated when:

- (a) Total Petroleum Hydrocarbons, levels are permanently reduced to below 100 parts per million (ppm) and total BTEX concentrations are less than 10 ppm, of which benzene cannot be greater than 1 ppm, or
- (b) Total Extractable Hydrocarbons and Total Purgeable Hydrocarbons levels are permanently reduced to below 100 parts per million (ppm) and total BTEX concentrations are less than 10 ppm, of which benzene cannot be greater than 1 ppm, or
- (c) as set forth in (2) of this rule;
- (d) soils contaminated with constituents other than petroleum hydrocarbons must be evaluated on a case by case basis. Department approval is required.

(2) Documented analytical results from at least 3 seasonal remediation sampling events must demonstrate contaminant concentrations have been stabilized and that:

- (a) remediation levels have been achieved through demonstration that biodegradation has occurred to the maximum extent possible under proper operating conditions; and
- (b) three consecutive seasonal sampling results have equal concentrations of contaminants being analyzed or are all within a 5% range.

(3) When remediation of contaminated soils within a treatment zone has been documented to be complete, the following may occur:

- (a) the remediated material may be removed and replaced by additional contaminated soils for treatment;
- (b) an additional lift may be applied to the treatment zone for treatment if:
 - (i) the maximum depth of remediated soil within the treatment cell does not exceed a depth of 5 feet;
 - (ii) the run-on/run-off berms are maintained and/or modified in a manner which accommodates the changes within the treatment cell(s);
 - (iii) below treatment zone sampling occurs at the appropriate depth necessary to reach the original 1 to 3 feet BTZ;
- (c) the treatment cell may be closed and reclaimed.

(4) A licensee may not supply, and a person may not use, remediated soils in any situation that may threaten human health and the environment, for residential topsoil, or for any purpose in school playgrounds or day care centers.

(5) Appropriate end-uses for soils remediated according to (1) or (2), above, are as follows:

Major Contaminant	POST REMEDIATION USE LEVELS (ppm)			
	1	2	3	4
Heavy Fuel hydrocarbons (C24-30)	<60	60 200	200 2000	>2000
Diesel (C12-C24)	<10	10 200	200 500	>500
Gasoline (C6-C12)	<20	20 100	100 250	>250

Benzene	<0.005	0.005 to 0.5	<0.5	>0.5
Ethylbenzene	<0.005	.005 20	<20	>20
Toluene	<0.005	.005 40	<40	>40
Xylenes (Total)	<0.005	.005 20	<20	>20

POST REMEDIATION USE

Level 1: Any use not prohibited by (4) above, which will not threaten human health or the environment.

Level 2: Backfill at a cleanup site, fill in industrial areas, daily cover or fill at licensed landfills, road sub grade or road construction fill.

Level 3: Daily cover or disposal in a licensed Class II landfill, road sub grade that will be completely covered with impermeable road surface material, or re treatment at a licensed landfarm.

Level 4: Re treatment in a landfarm or disposal in a licensed Class II facility.

(a) A person may not use soils with contaminants other than those listed in this subsection until they have been evaluated by the Department on a case by case basis based on biodegradation performance and risk evaluation.

(b) Soils with concentrations of metals exceeding the limits specified in subchapter 7 of this chapter may be used only for Level 3 or 4 uses.

10 _____ Landfarm Facility Closure Requirements. (1) A licensee shall close a facility under a plan approved by the department.

(2) All contaminated soils under management must be documented to have achieved maximum remediation pursuant to [9].

(3) Remediated soils that will be left at the facility must not contain RCRA metals above the limit specified in subchapter [7](22), or nitrates or phosphorous above the annual agronomic uptake rate for the proposed re-vegetation.

(4) closure options for remediated soils include:

(a) removing remediated soils to a location approved by the department in conformance with [9]; or

(b) spreading and contouring soils remediated to Level 1 of [9](5) in place; or

(c) covering soils remediated to Levels 2 or 3 of [9](5) with two feet of earthen cover capable of supporting native vegetation.

(5) Facility berms must be removed, leveled, or used for final cover.

Access roads must be reclaimed if not necessary for post-closure use;

(6) Disturbed areas of the facility must be re-vegetated with native plant growth or other department approved species capable of survival and growth throughout the post-closure period.

(7) The final topography of the facility must not result in ponded areas and must prevent erosion.

(8) Any facility groundwater wells not intended for post-closure use must be properly abandoned.

(9) Reserved.

(10) Final closure is subject to department inspection and approval.

11 _____ Landfarm Facility Post-Closure Requirements. (1) A licensee of a landfarm facility shall monitor the reclaimed site for vegetative success for a minimum of 2 years after closure, place documentation of the monitoring in the operating record, and submit the results annually to the department.

(2) The department may extend monitoring past the 2-year minimum if post-closure monitoring indicates a potential threat to human health or the environment.

(3) The department may require corrective action to mitigate possible environmental degradation resulting from facility operations and maintenance.

12 _____ Monitoring Well Construction. (1) All ground water monitoring wells must be constructed by a licensed monitoring well constructor with approval of the department, to the standards approved by the

department, and as required by this section, so as to obtain representative static water level data and ground water samples. An owner or operator may request from the department a waiver of the requirements listed in this rule for wells already constructed by the date of implementation of this rule. However, this waiver can only apply to wells previously approved by the department.

(2) Water samples may not be collected from piezometers unless constructed to specifications for standard monitoring wells.

(3) Drilling fluids and water may be used to drill monitoring wells only when there are no reasonable alternatives. If drilling fluids are used, the owner/operator shall document the type of fluids, any additives used and the chemical constituents of the mixture. If water is used, the source of water shall be identified.

(4) Drill rigs and all downhole equipment must be cleaned in accordance with technically accepted procedures prior to initiation of drilling on site. If site investigation is conducted at an existing landfill facility, then the rig and all downhole equipment must be decontaminated prior to the first borehole and between each borehole.

(5) When drilling equipment comes into contact with probable contaminants in the borehole or above ground, the driller shall thoroughly decontaminate the equipment prior to any additional drilling.

(6) A hydrogeologist, qualified ground water scientist, or other qualified person shall:

(a) observe and direct the drilling of all borings, the installation and development of all wells and all in-field hydraulic conductivity tests;

(b) demonstrate their competency in hydrogeology by submitting to the department a statement of qualifications before commencing work; and

(c) visually describe and classify all of the geologic samples derived from boring and well cuttings or samples.

(7) All monitoring wells must be constructed:

(a) to minimize the potential for contaminants to enter the ground water or to move from one major soil unit or bedrock formation to another;

(b) with a difference of 3 to 5 inches between the outer diameter of the casing/screen and the inner diameter of the surface of the borehole to facilitate placement of the filter pack, as well as annular sealants; and

(c) with grout or other seal material extended down to within 5 feet of the zone being monitored.

(8) All ground water monitoring wells shall have caps to prevent contaminants from entering the monitoring device. All monitoring wells shall have protective outer casings and locking lids. The lids shall be kept locked. The department may require additional protective devices such as rings of brightly colored posts around any monitoring device.

(9) All monitoring wells shall be clearly and permanently labeled and water level measuring points clearly marked. At a minimum, the label shall include the well name and number.

(10) All ground water monitoring wells must be properly developed to remove fine soil particles, drill cuttings and drilling fluids from the vicinity of the well screen. After development the ground water must be tested for pH, temperature, specific conductance and total suspended solids. If liquid drilling fluids were used during well construction, a sample must also be tested for chemical oxygen demand. After development, all wells must be repeatedly measured for static water level until stabilized measurements are obtained.

(11) Ground water monitoring well information must be reported on department approved forms. The department will provide forms for reporting ground water monitoring well construction, boring log information, well development, and other ground water monitoring information as required by the department, including:

(a) the type, diameter, length and elevation of the top of the protective casing;

(b) the grout used as a surface seal between the well casing and the protective casing, including the depth and width of surface seal below the land surface, the height and width of the plug above the land surface;

(c) the type of cap and lock mechanism;

(d) the well casing material, length, diameter, schedule, and type of joints;

(e) the screen material, length, diameter, schedule, slot type and size, percent open area, and type of screen bottom;

(f) the distance the filter pack extends above the screen;

(g) the thickness of the filter/gravel pack (i.e. the spacing differential between the outer diameter of the casing/screen and the inner diameter of the surface of the borehole);

(h) local datum or mean sea level elevations of the top of casing and land surface to plus or minus 0.05 feet, depth from the land surface to an elevation of the bottom of the borehole, the bottom of the well screen, and top and bottom of all seals; and horizontal well locations identified by the landfill coordinate system to the nearest ten feet;

(i) the filter pack material, including grain size analysis, quantity of packing material used and manufacturer and product name or number;

(j) the drilling fluid including additives or water added during drilling;

(k) the drilling method used, type of drill rig, borehole diameter, inside diameter of the hollow stem auger, if used, cleaning procedures, and the date the well was drilled; and

(l) the date the well was developed, development method, time spent developing the well, volume of water removed and added during development, source of development water, the clarity of water before and after development, presence of sediment at the bottom of the well before and after development, and volume of water purged.

(12) Requirements for drilling are as follows:

(a) In order to create a stable, open, vertical well hole for installation of the well screen and riser, one of the following drilling methods must be utilized, listed in decreasing order of preference:

(i) Drilling with hollow stem augers is the most preferred method.

(ii) Air rotary drilling with an oil filter/trap.

(iii) Cable tool methods and other percussion tool drilling may be attempted in hard, consolidated formations.

(iv) Reverse circulation drilling is preferred to wet rotary drilling.

(v) Wet rotary drilling with clean water only and insertion of temporary flush-joint casing, with consideration being given to the procedures used to prevent mixing of upper zones with lower zones.

(b) Continuous soil sampling or sampling collection at five foot intervals and lithologic changes should be performed.

(c) All materials used in construction must be free of chemicals, paint, coatings, etc., that could leach. Decontamination of all downhole assemblies must be performed, using steam or an appropriate alternative.

(d) When assembling a well screen, riser, and sampler, there must be a stable borehole. The order of steps to complete the well must be:

(i) assembly of well screen and riser;

(ii) setting the well screen;

(iii) placement of the filter/gravel pack;

(iv) placement of the seal;

(v) grouting of the annular space;

(vi) well protector;

(vii) installation of the [dedicated] sampler.

(e) Well development must be continued until representative formation water, free of the effects of well construction, is obtained and the specific conductance, temperature, and pH have stabilized.

13 _____ Annual Reporting, Consolidated Operations, License Classifications. (1) Any person owning or operating a facility that manages solid waste shall submit to the department by April 1 of each year, on a form provided by the department, the following information:

(a) service areas and population of those areas;

(b) total tonnage of solid waste received and disposed of during the previous year. Facilities that do not operate scales and that measure the volume of waste received and disposed of will use the following conversions to determine tonnage:

(i) loose refuse (residential and commercial) = 300 pounds per cubic yard;

(ii) compacted refuse (packer truck) = 700 pounds per cubic yard.

(c) for a landfarm facility, a report summarizing the total volume in cubic yards of contaminated soils accepted for treatment and under treatment during the previous year as demonstrated by compilation of waste acceptance forms, bills of lading, or trip tickets;

(d) for a large or small composter facility, a report summarizing:

(i) the kinds of materials accepted;

(ii) the total volume in cubic yards of material accepted; and

(iii) the tons of compost produced.

(e) for facilities licensed primarily for the storage, treatment, processing, or disposal of waste tires, the kind and number of tires received by the facility and the number of tires processed, treated, disposed of, or removed from the facility during the previous year.

(2) The department may not assess additional fees for composting, household hazardous waste collection, or landfarm operations conducted at a licensed facility that disposes of Group II wastes through landfilling if those operations are:

(a) conducted on the same site as the landfill; and

(b) included in the facility's approved plan of operation.

(3) Fees for the following special categories of Class IV units and facilities are as follows:

(a) for a Class IV unit at a Class II facility there is no additional fee. However the design and operation of the Class IV unit must be included in the facility's design and operation plan and the disposal fee per ton applies to wastes placed in the Class IV unit.

(b) for a Class III facility that applies to upgrade to Class IV, the application review fee is 50% of the respective fee specified for the appropriate Class IV facility in the following table;

APPLICATION REVIEW FEE SCHEDULE

FACILITY	REVIEW FEE
Major Class II facility	\$12,000
Intermediate Class II facility	\$ 9,000
Minor Class II facility	\$ 6,000
Major Class III facility	\$ 3,600
Minor Class III facility	\$ 2,400
Major Class IV facility	\$ 3,600
Minor Class IV facility	\$ 2,400
Major incinerator	\$12,000
Intermediate incinerator	\$ 9,000
Minor incinerator	\$ 600
Major landfarm facility	\$ 3,600
Intermediate landfarm facility	\$ 2,400
Minor landfarm facility	\$ 1,200
One-time landfarm (³ 800 cubic yds)	\$ 500
One-time landfarm (<800 cubic yds)	\$ 200
Transfer station (³ 10,000 tons/yr)	\$ 8,400
Transfer station (<10,000 tons/yr)	\$ 4,800
Large composter operation	\$ 3,600
Small composter operation	\$ 0

Part 1. General Provisions

1EA1 _____ **Short title.** Parts 1 through 3 may be cited and known as the "Crow Tribal Environmental Policy Act".

1EA2 _____ **Purpose.** The purpose of parts 1 through 3 is to declare a Crow Tribal policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the Crow Tribe, and to establish an environmental quality council.

1EA3 _____ **Policy.** (1) The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the Crow Tribe of Indians, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of people living within the exterior boundaries of the Crow Reservation.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the Crow Tribe of Indians to use all practicable means consistent with other essential considerations of tribal policy to improve and coordinate tribal plans, functions, programs, and resources so that the tribe may:

- (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) ensure for all people within the Crow Reservation boundaries safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) protect the right to use and enjoy private property free of undue government regulation;
- (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- (f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- (g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

1EA4 _____ **Specific statutory obligations unimpaired.** Nothing in 1EA3 or 2EA1 shall in any way affect the specific statutory obligations of any department of the Crow Tribe to:

- (1) comply with criteria or standards of environmental quality;
- (2) coordinate or consult with any other state or federal agency; or
- (3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

1EA5 _____ **Policies and goals supplementary.** The policies and goals set forth in parts 1 through 3 are supplementary to those set forth in existing authorizations of all boards, commissions, and departments of the Crow Tribe.

1EA6 _____ **Private property protection -- ongoing programs of tribal government.** Nothing in 1EA2, 1EA3, or 2EA1 expands or diminishes private property protection afforded in the U.S. or Crow Tribal constitutions. Nothing in 1EA2, 1EA3, or 2EA1 may be construed to preclude ongoing programs of the Crow Tribal government pending the completion of any statements that may be required by 1EA2, 1EA3, or 2EA1.

1EA7 _____ **Reserved for Environmental Rehabilitations and Response Account.**

1EA8 _____ **Environmental Quality Council Appointment and Composition.** The environmental quality council consists of 9 members as follows:

(1) the Chairman or the Chairman's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) 3 members of the Executive Branch appointed by the Chairman and 3 Members of the Legislative Branch appointed by the speaker of the house before the _____ the legislative day in the same manner as standing committees of the respective branches are appointed.

(3) Two members of the general public. One public member must be appointed by the Legislative Branch speaker of the house and one must be appointed by the Chairman of the Executive Branch.

(4) the term for each council member is four years.

1EA9 _____ **Reserved.**

Part 2. Environmental Impact Statements

2EA1 _____ **General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the Crow Tribe must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) under this part, all agencies of the Crow Tribe, except the legislature and except as provided in subsection (2), shall:

(I) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment; and

(B) that in any environmental review that is not subject to subsection (1)(b)(iv), when an agency considers alternatives, the alternative analysis will be in compliance with the provisions of subsections (1)(b)(iv)(C)(I) through (1)(b)(iv)(C)(III) and, if requested by the project sponsor or if determined by the department to be necessary, subsection (1)(b)(iv)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that the Crow Tribal government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of tribal government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible as determined solely by the economic viability for

similar projects having similar conditions and physical locations and determined without regard to the economic strength of the specific project sponsor;

(II) the department proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the department shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the department's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the department regarding the issue. The department may not charge the project sponsor for any of its activities associated with any review under this section. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 2EA8.

(IV) The department shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's no completion.

(D) Any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1) (b) (IV) (D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented; and

(G) the details of the beneficial aspects of the proposed project, both short-term and long-term, and the economic advantages and disadvantages of the proposal;

(v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the Crow Tribe, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 1EA8.

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible Crow Tribal official shall consult with and obtain the comments of any Crow Tribal department that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible Crow Tribal official shall also consult with and obtain comments from any Crow Tribal department with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate tribal, state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the Chairman, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by a department, either singly or in combination with other Crow Tribal departments, does not trigger review under subsection (1) (b) (iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) In any action challenging or seeking review of a department's decision that a statement pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, the Crow Tribal Court may not consider any issue relating to the adequacy or content of the department's environmental review document or evidence that was not first presented to the department for the department's consideration prior to the department's decision. The court may not set aside the department's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence or issues relating to the adequacy or content of the

department's environmental review document are presented to the Crow Tribal Court that had not previously been presented to the agency for its consideration, the court shall remand the new evidence or issue relating to the adequacy or content of the department's environmental review document back to the department for the department's consideration and an opportunity to modify its findings of fact and administrative decision before the Crow Tribal court considers the evidence or issue relating to the adequacy or content of the department's environmental review document within the administrative record under review. Immaterial or insignificant evidence or issues relating to the adequacy or content of the department's environmental review document may not be remanded to the department. The Crow Tribal court shall review the department's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

(4) To the extent that the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) are inconsistent with federal requirements, the requirements of subsections (1)(b)(iv)(C)(I) and (1)(b)(iv)(C)(III) do not apply to an environmental review that is being prepared by a tribal department pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that is being prepared by a tribal department to comply with the requirements of the National Environmental Policy Act.

(5) (A) the department may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter.

(b) Nothing in this subsection (5) prevents a project sponsor and a department from mutually developing measures that may, at the request of a project sponsor, be incorporated into a permit or other authority to act.

(c) Parts 1 through 3 of this chapter do not confer authority to a department that is a project sponsor to modify a proposed project or action.

(6) (A) A challenge to a department action under this part may only be brought against a final department action and may only be brought in Crow Tribal court. Any action or proceeding challenging a final department action alleging failure to comply with or inadequate compliance with a requirement under this part must be brought within 60 days of the action that is the subject of the challenge.

(b) Any action or proceeding under subsection (6) (a) must take precedence over other cases or matters in the tribal court unless otherwise provided by law.

(7) The director of the department responsible for the determination or recommendation shall endorse in writing any determination of significance made under subsection (1)(b)(iv) or any recommendation that a determination of significance be made.

(8) A project sponsor may request a review of the significance determination or recommendation made under subsection (7) by the appropriate board, if any. The appropriate board may, at its discretion, submit an advisory recommendation to the department regarding the issue. The period of time between the request for a review and completion of a review under this subsection may not be included for the purposes of determining compliance with the time limits established for environmental review in 2EA8.

2EA2 _____ **Department rules to prescribe fees.** Each Department of the Crow Tribal government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of Crow Tribal law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require a department to compile an environmental impact statement as prescribed by 2EA1. A department must determine within 30 days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this part. The fee assessed under this part shall be used only to gather data and information necessary to compile an environmental impact statement as defined in parts 1 through 3. No fee may be assessed if a department intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

2EA3 _____ **Fee schedule -- maximums.** (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 2EA2, a department may adopt a fee schedule that may be adjusted depending upon the size and complexity of the proposed project. A fee may not be assessed unless the application for a lease, permit, contract, license, or certificate will result in the department incurring expenses in excess of \$2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by a department may not exceed 2% of any estimated cost up to \$1 million, plus 1% of any estimated cost over \$1 million and up to \$20 million, plus 1/2 of 1% of any estimated cost over \$20 million and up to \$100 million, plus 1/4 of 1% of any estimated cost over \$100 million and up to \$300 million, plus 1/8 of 1% of any estimated cost in excess of \$300 million.

(3) If an application consists of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities. The estimated cost must be determined by the department and the applicant at the time the application is filed.

(4) Each department shall review and revise its rules imposing fees as authorized by this part at least every 2 years.

(5) In calculating fees under this section, the department may not include in the estimated project cost the project sponsor's property or other interests already owned by the project sponsor at the time the application is submitted. Any fee assessed may be based only on the projected cost of acquiring all of the information and data needed for the environmental impact statement.

2EA4 _____ **Application of administrative procedure act.** In adopting rules prescribing fees as authorized by this part, a department shall comply with the provisions of the Crow Tribal Administrative Procedure Act to be adopted.

2EA5 _____ **Use of fees.** All fees collected under this part shall be deposited in the Crow Tribal Environmental Protection Programs Budget. All fees paid pursuant to this part shall be used as herein provided. Upon completion of the necessary work, each department will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

2EA6 _____ **Multiple applications or combined facility.** In cases where a combined facility proposed by an applicant requires action by more than one department or multiple applications for the same facility, the Chairman shall designate a lead department to collect one fee pursuant to this part, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the necessary funds to the other departments which require funds for the completion of the necessary work.

2EA7 _____ **Reserved.**

2EA8 _____ **Environmental review procedure.** (1) (A) except as provided in subsection (1) (b), a department shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a Crow tribal department pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

(2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the department's environmental review of the project. The environmental quality council shall ensure that the appropriate department personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the department or any consultant hired by the department regarding an environmental review, the project sponsor may submit a written request to the department director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the department to prepare for the meeting. If the issues remain unresolved after the meeting with the department director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the department and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the department receives a complete application. A department has:

(I) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 2EA1(1)(b)(iv) is required; and

(iii) 180 days to complete a detailed statement pursuant to 2EA1(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 2EA1 (1) (b) (iv) (C) (III) or (8) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting of specific permits.

(5) An department may extend the time limits in subsection (4) by notifying the project sponsor in writing that an

extension is necessary and stating the basis for the extension. The department may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the department may not extend the time limit unless the department and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the department's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the department regarding the issue.

(7) (a) Except as provided in subsection (7) (b), if a department has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Reserved.

(8) Under this part, a department may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) A department shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) A department may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an department's request regarding the level of design detail information that the department believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the department regarding the issue.

(11) A department shall, when appropriate, consider the cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any department through preimpact statement studies, separate impact statement evaluations, or permit processing procedures.

2EA9 _____ **Definitions.** For the purposes of this part, the following definitions apply:

(1) "Appropriate board" means, for administrative actions taken under this part by the:

(a) department of environmental quality, the board of environmental review, as provided for in 1EA8 & 1EA9;

(b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission.

(c) Department of transportation, the transportation commission.

(d) Department of natural resources and conservation for Crow Tribal trust land issues.

(e) Department of natural resources and conservation for oil and gas issues, the board of oil and gas committee.

(f) Department of agriculture, the board of livestock.

(2) "Complete application" means, for the purpose of complying with this part, an application for a permit, license, or other authorization that contains all data, studies, plans, information, forms, fees, and signatures required to be included with the application sufficient for the department to approve the application under the applicable statutes and rules.

(3) "Cumulative impacts" means the collective impacts on the human environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type.

(4) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis required under this part by a Crow Tribal department of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(5) "Project sponsor" means any applicant, owner, operator, agency, or other entity that is proposing an action that requires an environmental review.

(6) "Public scoping process" means any process to determine the scope of an environmental review.

Part 3. Environmental Quality Council

3EA1 _____ **Definition of council.** In this part "council" means the environmental quality council provided for in 1EA8.

3EA2 _____ **Meetings.** The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses. Members who are full-time salaried officers or employees of the Crow Tribe may not be compensated for their service as members but shall be reimbursed for their expenses.

3EA3 _____ **Examination of records of government departments.** The council shall have the authority to investigate, examine, and inspect all records, books, and files of any department, agency, commission, board, or institution of the Crow Tribe.

3EA4 _____ **Hearings -- council subpoena power -- contempt proceedings.** In the discharge of its duties the council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the Crow Tribal court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council or any committee thereof or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the Crow Tribal court or the judge thereof, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

3EA5 _____ **Consultation with other groups -- utilization of services.** In exercising its powers, functions, and duties under parts 1 through 3, the council shall:

- (1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and
- (2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established departments.

3EA6 _____ **Reporting requirements.** (1) The departments of environmental quality, agriculture, and natural resources and conservation shall biennially report to the council the following natural resource and environmental compliance and enforcement information:

- (a) the activities and efforts taking place to promote compliance assistance and education;
 - (b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;
 - (c) the number, description, method of discovery, and significance of noncompliance, including those noncompliance that are pending; and
 - (d) a description of how the department has addressed the noncompliance identified in subsection (1)(c) and a list of the noncompliance left unresolved.
- (2) When practical, reporting required in subsection (1) should include quantitative trend information.

3EA8 _____ **Duties of environmental quality council.** The environmental quality council shall:

(1) On the first quarterly meeting the council shall elect a chairman of the council and a secretary. The chairman will take the leadership role and act as a spokesman for the council. The secretary will take notes at meetings and help set up the agenda for every meeting. The set term for the elected positions is one year. At the beginning of the first quarter of every year, the council will vote and re-select a chairman.

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 1EA3, and compile and submit to the Chairman and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the tribal departments, in the light of the policy set forth in 1EA3, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the Chairman and the legislature with respect to the policy;

(3) develop and recommend to the Chairman and the legislature tribal policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements

and goals of the Crow Tribe;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative departments, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation.

