

TITLE 22

CROW PUBLIC UTILITIES AND CROW ENVIRONMENTAL PROTECTION AGENCY

Pursuant to the authority vested in the Legislative Branch of the Crow Tribe by and through its organic document, the Constitution and Bylaws dated July 14, 2001, and particularly Article V Section 2 (a) and (c) and its authority to provide for the health, safety, morals and welfare of the Tribe, the Legislative Branch of the Crow Tribe hereby establishes a public body to be known as the Crow Public Utilities (hereinafter "CPU" or "Utility"), and enacts this Ordinance which shall establish the purposes, powers and duties of the CPU.

Pursuant to the authority vested in the Legislative Branch of the Crow Tribe by and through its organic document, the Constitution and Bylaws dated July 14, 2001, and particularly Article V Section 2 (a) and (c) and its authority to provide for the health, safety, morals and welfare of the Tribe, the Legislative Branch of the Crow Tribe hereby establishes a regulatory agency of the Crow Tribal Executive Branch to be known as the Crow Environmental Protection Agency (hereinafter "CEPA"), and enacts this Ordinance which shall establish the purposes, powers and duties of the CEPA.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the CPU and CEPA shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Ordinance by the Legislative Branch of the Crow Tribe and approval by the Chairman of the Crow Tribe. A true, accurate and complete copy of this Ordinance duly certified by the Secretary of the Crow Tribal Executive Branch shall be admissible in evidence in any suit, action or proceeding.

ARTICLE I

DECLARATION OF NEED

It is hereby declared:

1. That there exists in the towns and communities within the exterior boundaries of the Crow Reservation inadequate drinking water, wastewater and solid waste facilities that directly impact the availability of safe, decent and sanitary water;
2. That these conditions cause an increase in and spread of disease (and crime) and constitute a menace to health, safety, the environment and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for noncompliance with Tribal and Federal environmental protection standards, public health and safety protection, fire and accident prevention and other public services and facilities;

3. That the Tribe seeks to protect the air, water, and land from solid and hazardous waste pollution and to target, curtail, and control pollutions within its territory, including solid and hazardous waste dumping and unauthorized open burning;
4. That the Tribe has inherent sovereign power to manage and regulate the storage, collection, transportation, handling, treatment, and disposal of solid and hazardous waste within the Crow Reservation;
5. That the Tribe seeks to hold any person who has generated or received any solid or hazardous waste responsible for the proper storage, removal, transport, and disposal of such waste at a transfer station or other approved site and to create a solid waste management program, including oversight, inspection, and enforcement authorities;
6. That the inadequacy and shortage of these sanitary facilities cannot be relieved through the operation of private enterprise;
7. That the providing of safe, decent and sanitary drinking water, wastewater, and solid waste handling facilities and accommodations to persons who dwell and reside within the exterior boundaries of the Crow Reservation are for public uses and purposes for which money may be spent, private property acquired, and are governmental functions of tribal concern; and
8. That the necessity in the public interest for the provisions hereinafter enacted are hereby declared as a matter of legislative determination.

ARTICLE II

PURPOSES OF THE CPU AND THE CEPA

The CPU shall be organized and operated for the purposes of:

1. Preserving and restoring the environmental, economic, and public health qualities of the air, water and land within the Crow Reservation;
2. To serve as the Crow Tribe Public Utility to continuously providing safe and reliable drinking water, wastewater and solid waste services, including oversight and management of Public Utility programs, including the collection of fees set for the provision of Public Utility services;
3. Remediating unsafe and unsanitary water, wastewater, and solid waste handling facilities within the Crow Reservation that are inadequate and either injurious to the public health, safety and the environment or potentially injurious to the public health, safety and the environment of these communities; and

4. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of these drinking water, wastewater, and solid waste handling facilities.

The CEPA shall be organized and operated for the purposes of:

1. Protecting the air, water, and land from pollution and targeting, curtailing, and controlling pollutions within its territory, including solid and hazardous waste dumping, unauthorized open burning, and unauthorized use of sewers and other services provided by the CPU.
2. Providing an enforcement agency with authority to oversee all solid waste and wastewater handling activities, to conduct inspections and request information relating to such activities, to require and conduct investigations at and releases from solid waste handling sites, sewers and other locations where services are provided by the CPU, and to take actions to enforce against and enjoin violations of this Ordinance including regulations issued hereunder.
3. Providing an enforcement agency with authority to oversee all Hazardous Waste handling activities, to conduct inspections and request information relating to hazardous waste handling activities, to require and conduct investigations related to hazardous waste handling sites, and to take actions to enforce against and enjoin violations of this Ordinance and regulations promulgated hereunder.
4. Oversee cleanup of contaminated sites to ensure compliance with all applicable law including this Ordinance and regulations promulgated hereunder and restoration of Crow Tribal air, water and land damaged by illegal pollution.

ARTICLE III

DEFINITIONS

The following terms, wherever used or referred to in this Ordinance, shall have the following respective meaning, unless a different meaning clearly appears from the context:

“Area of Operation” - means all the area within the territorial jurisdiction of the Tribe.

“Black Water” means wastewater from toilet water, the washing of material that includes diaper excrement (but not the diaper itself).

“Board” or “Utility Board” means the Board of Directors of the CPU.

“Bulky Waste” - means large items of Solid Waste such as household appliances, furniture, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal solid wastes collection, processing, or disposal methods.

“CEPA” means the Crow Environmental Protection Agency.

“CPU” means the Crow Public Utilities.

“Director” means the CPU Director.

“Dispose” or “discard” means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any Solid Waste or Hazardous Waste into or on any soil, air, water, or determined Tribal natural resource whether intentional or otherwise.

“Executive” means the Crow Tribal Executive Branch.

“Federal government” means the United States of America, including the Indian Health Service, the Environmental Protection Agency, the Bureau of Indian Affairs, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

“Grey Water” means wastewater from clothes-washing, showers, bathtubs, hand-washing sinks, kitchen sinks, and other drains.

“Hazardous Waste” means a hazardous waste as defined in 40 CFR § 261.3 as established by the United States Environmental Protection Agency. Hazardous Waste is a subset of Solid Waste, as defined below in this Article III.

“Household Waste” means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas).

“Household Hazardous Waste” means Solid Waste discarded by households, such as paints, cleaners, oils, batteries, and pesticides, which require special care when handling them.

“Illegal Dumping” means the dumping of Solid Waste, Hazardous Waste, Bulky Waste, White Goods, or other waste onto or into the ground or into water outside of a permitted disposal site.

“Legislature” means the Crow Tribal Legislative Branch.

“Littering” means improperly disposing of a small amount (less than 2 kilograms) of Solid Waste that is not also Hazardous Waste, either intentionally or in a careless or negligent manner.

“Nuisance” means any act or condition that occurs as a result of handling, treatment, or disposal of Solid Waste which, by its nature, character, or location interferes with the reasonable use and enjoyment of adjacent or nearby properties, or which unreasonably annoys, harms, or endangers the safety or health of any person.

“Obligation” means any notes, bonds, interim certificates, debentures, or other forms of financial obligation issued by the CPU pursuant to this Ordinance.

“Obligee” means the holder of an Obligation, agent or trustee for any holder of an Obligation, or lessor demising to the CPU property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the Federal Government when it is a party to any contract with the CPU in respect to a wastewater and/or drinking water project or other related facility.

“Open Burning” means the burning of Solid Waste or other discarded material in such a manner that combustion air is not effectively controlled, and the combustion products are not vented through a stack or chimney, including but not limited to open outdoor fires, burn piles, common burn barrels, backyard incinerators, or burning in any other uncontrolled manner.

“Operator” means the Certified CPU Operator.

“Person” means any natural person, public or private corporation, company, partnership, firm, association or society of persons, or entity, including governmental entities.

“Pesticide” means any substance or mixture of substances 1) intended for preventing, destroying, repelling, or mitigating any pest; 2) intended for use as a plant regulator, defoliant, or desiccant; or 3) that is a nitrogen stabilizer. Pesticides can include insecticides, fungicides, rodenticides, nematocides, algicides, or selective and non-selective herbicides.

“Public Utility” means the Tribal Organization that provides the basic community needs of safe and reliable drinking water, wastewater and solid waste services.

“Recycling” means the use, reuse or reclamation of Solid Waste.

“Solid Waste” as defined in 40 CFR Parts 257 and 258 - means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Transfer Station" means any place designated by the Tribe or its officers or departments as the site where solid or other waste may be presented for consolidation and temporary storage before transportation to a disposal or recycling facility.

“Tribal Court” means the Crow Tribal Court.

“Tribe” means the Crow Tribe.

“White Goods” means major appliances, including but not limited to, refrigerators, freezers, air conditioners, stoves, ranges, dishwashers, washers, dryers, microwaves, and trash compactors.

ARTICLE IV

CROW PUBLIC UTILITIES BOARD

1. The affairs of the CPU shall be managed by a Utility Board to assure that the CPU carries out its duties with respect to drinking water, as well as wastewater and solid waste handling; the Utility Board shall also exercise powers pursuant to this Ordinance to adopt, and from time to time amend, the policies and regulations necessary to conduct the affairs of the CPU, set rates and to exercise and delegate the powers of the CPU and duties of the Board pursuant to this Ordinance.
2. The Utility Board shall be composed of five (5) members (Board Members(s)):
 - (a) The Crow Legislative Infrastructure Committee Chairman;
 - (b) John Doyle;
 - (c) James “Jimmy” Real Bird;
 - (d) Joree LaFrance; and
 - (e) The Crow Tribal Health and Human Services (HHS) Cabinet Head.
3. Members of the Utility Board must meet the following qualifications for appointment:
 - (a) Be at least twenty-one (21) years of age;
 - (b) Have at least a high school diploma or its equivalent;
 - (c) Have never been convicted of a felony criminal offense in any jurisdiction;
 - (d) Possess prior business or work experience; and
 - (e) Be an enrolled member of the Crow Tribe (persons enrolled as descendants are not eligible).

4. The initial Utility Board shall serve four (4) year terms; provided that the Crow Legislative Infrastructure Committee Chairman and Crow Tribal HHS Cabinet Head sit on the Board as ex officio Board members.
5. Grounds for removal of a Board Member shall include:
 - (a) Conviction of a felony crime when serving on the Utility Board;
 - (b) Conviction of driving under the influence of alcohol when serving on the Utility Board; or
 - (c) Engaging in conduct that is detrimental to the integrity of the Utility Board or contrary to their oath of office.
6. Each Board Member shall represent the residents of the Crow Reservation at large. No Board Member shall attempt to control or influence the CPU except through official action of the Board. No entity, including the Tribe, shall exercise any decision-making authority or influence over the Board Members.
7. There is no limitation on the number of terms a Board Member may serve. Board Members shall remain on the Board until his or her successor is officially appointed by the Utility Board, or the Member no longer meets the required qualifications. Upon completion of the initial terms, Board Members may re-apply to serve as a Board Member.
8. The Utility Board shall appoint successor Board members to fill vacancies on the Board, provided that the appointee meets the requirements of this Article and is approved by a majority of the Board.
9. If an appointed Board Member misses three (3) consecutive regular meetings, their position shall be vacant as a matter of law and the position automatically filled as provided in this Article, Section 8.
10. A Board Member shall perform their duties as a Board Member in good faith, in a manner the Board Member believes to be in or not opposed to the best interests of the CPU, and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a Board Member shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data prepared by the Board or professionals retained by the Board.
11. A Board Member shall take an oath delivered by the Legislative Speaker of the House, as follows:

“I, _____, do solemnly swear that I will administer justice without respect to Persons and will truly, faithfully, and impartially discharge and perform all the duties incumbent upon me as a member of the Crow Public Utilities Board according to the best of my abilities and understanding. So help me God.”

12. The Utility Board shall hold quarterly or other meetings for the transaction of business at times and places it considers necessary and proper. The meetings must be called by a majority of the Board Members and must be held at the time and place specified in the call for the meeting. A majority of the Board Members shall constitute a quorum for the transaction of any business that may come before it.
13. The Utility Board shall appoint a Presiding Officer and Secretary from its members.
14. The Utility Board shall keep a record of all the business transacted by it. The presiding officer and secretary shall sign all orders, minutes, or documents for the Utility Board. The minutes shall be public.
15. A conflict of interest may exist when a Board Member has a material personal interest in a proposed transaction involving CPU. When a Board Member has a personal interest in a matter being considered by the Board, the Board Member shall disclose the conflict before the Board discusses the matter. The Board Member shall not vote or use their personal influence on the matter and will not be present when the matter is discussed by the Board. The minutes of the meeting will reflect that a disclosure was made, and the abstention from voting. A material personal interest shall be defined as:
 - (a) Receipt of a contract/compensation from the organization that is outside the usual compensation and benefits awarded to all Board Members; or
 - (b) A family member of the Board Member receiving employment, a contract, or compensation from CPU.

ARTICLE V

POWERS OF THE CPU

1. The CPU shall have perpetual succession in its corporate name.
2. The Legislative Branch hereby gives its consent to allowing the CPU to sue and be sued in the corporate name of the CPU, upon any contract, claim or Obligation arising out of its activities under this Ordinance and hereby authorizes the CPU to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or Obligations of the CPU. Nothing in this Act shall constitute any waiver whatsoever of the CPU's or the Crow Tribe's sovereign immunity with respect to money damages or any extra form of monetary relief.

3. All property including funds acquired or held by the CPU pursuant to this Ordinance shall be exempt from levy and sale by virtue or an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the CPU be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any other remedies for the enforcement of any pledge or lien given by the CPU on its rents, fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant to the provisions of this Ordinance.
4. CPU Board shall have the following powers which it may exercise consistent with the purposes for which it is established:
 - (a) To adopt and use a corporate seal.
 - (b) To enter into agreements, contracts and understandings with any governmental agency, Federal, State or local (including the Crow Tribe) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to such financial assistance.
 - (c) To agree, notwithstanding anything to the contrary contained in this Ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the CPU may include in any contract let in connection with a project stipulations requiring that the contractor or any subcontractors comply with requirements of minimum salaries or wages and maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid to the project.
 - (d) To obligate itself in any contract with the Federal government for contributions to the CPU, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default with respect to the covenants or conditions to which the CPU is subject; and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the CPU the project as then constituted.
 - (e) To lease property from the Tribe and others for such periods as authorized by law, and to hold and manage or to sublease the same;

- (f) To borrow or lend money, to issue temporary or long-term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this Ordinance;
- (g) To pledge the assets and receipts of the CPU as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interest therein;
- (h) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law;
- (i) To undertake and conduct studies and analyses of drinking water, wastewater and solid waste handling needs, to prepare plans to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof;
- (j) To administer and manage the day-to-day management and maintenance of any Public Utility programs developed for the delivery of drinking water, waste-water management, and solid waste management, including but not limited to the collection of fees and costs to program participants, and undertaking actions for non-payment of fees.
- (k) To purchase insurance from any stock or mutual company for any property or against any risk or hazards;
- (l) To invest such funds not required for immediate disbursement;
- (m) To establish such banks accounts as may be necessary or convenient;
- (n) To employ a Director, Operators, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the CPU may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper;
- (o) To draft, adopt, and amend, regulations, plans, policies, guidance, and other drinking water, wastewater, and solid waste program implementation documents consistent with the authorities granted to the CPU in this Ordinance;
- (p) To prepare and adopt a budget for the CPU;
- (q) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the CPU;

- (r) To join or cooperate with any other public agencies operating under the laws or ordinances of the United States, a state or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the CPU and such other public agencies for the purpose of financing, planning, undertaking, owning, constructing, operating, or contracting with respect to a water and waste water, solid waste project or projects of the CPU or such other public water and waste water and solid waste agency or agencies. For such purpose, the CPU may by resolution prescribe and authorize any other public water, wastewater and solid waste agency or agencies, so joining or cooperating with the CPU, to act on the CPU's' behalf with respect to any or all powers, as the CPU's' agent or otherwise, in the name of the CPU or in the name of such agency or agencies; and
 - (s) To adopt such bylaws as the Board deems necessary and appropriate to ensure the effective functioning of the CPU.
5. It is the purpose and intent of this Ordinance to authorize the CPU to do all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, management, maintenance or operation of any project by the CPU.

ARTICLE VI

OBLIGATIONS OF THE CPU

1. The CPU shall give biannual summary reports to the Executive Branch and Crow Legislative Infrastructure Committee, as outlined in Article XI.3.
2. The CPU may issue Obligations from time to time in its discretion for any of its purposes and may also issue refunding Obligations for the purpose of paying or retiring Obligations previously issued by it. The CPU may issue such types of Obligations as it may determine, including Obligations on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such Obligations, or with such income and revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such Obligations; or (c) from its revenues generally. Any of such Obligations may be additionally secured by a pledge of any revenues of any project or other property of the CPU.
3. The CPU shall carry errors, omission and liability insurance at all times for Board Members, Directors, officers, managers and employees. Neither the Board Members or the Director of the CPU nor any person executing the Obligations shall be liable personally for the Obligations by reason of issuance thereof.
4. The notes and other Obligations of the CPU shall not be a debt of the Tribe and the Obligations shall so state on their face.

5. Obligations of the CPU are issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this Ordinance shall be considered part of the security for the repayment of Obligations and shall constitute, by virtue of this Ordinance and without necessity of being restated in the Obligations, a contract between (a) the CPU and the Tribe, and (b) the holders of Obligations and each of them, including all transferees of the Obligations from time to time.
6. Obligations shall be issued and sold in the following manner:
 - (a) Obligations of the CPU shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.
 - (b) The Obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.
 - (c) The Obligations may be sold at public or private sale at not less than par.
 - (d) In case any of the directors of the CPU whose signatures appear on any Obligations cease to be directors before the delivery of such Obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.
7. Obligations of the CPU shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any Obligation of the CPU or the security therefore, any such Obligation reciting in substance that it has been issued by the CPU to aid in financing a project pursuant to this Ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such Obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Ordinance.
8. In connection with the issuance of Obligations or incurring of Obligations under leases and to secure the payment of such Obligations, the CPU, subject to the limitations of this Ordinance, may:
 - (a) Pledge all or any part of its gross rents, fees or revenues to which its right then exists or may thereafter come into existence.
 - (b) Provide for the powers and duties of Obligees and limit their liabilities; and provide the terms and conditions on which such Obligees may enforce any covenant or rights securing or relating to the Obligations.

- (c) Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.
- (d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.
- (e) Covenant as to what other or additional debts or Obligations may be incurred by it.
- (f) Covenant as to the Obligations to be issued and as to the issuance of such Obligations in escrow or otherwise, and as to the use and disposition of the proceeds, thereof.
- (g) Provide for the replacement of lost, destroyed or mutilated Obligations.
- (h) Covenant against extending the time for the payment of its Obligations or interest thereon.
- (i) Redeem the Obligations and covenant for their redemption and provide the terms and conditions thereof.
- (j) Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period by rents, fees and other revenues, and as to the use and disposition to be made thereof.
- (k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves and other purposes, and covenant as to the use and disposition of the monies held in such funds.
- (l) Prescribe the procedure, if any, by which the terms of any contract with holders of Obligations may be amended or abrogated, the proportion of outstanding Obligations the holders of which must consent thereto, and the way such consent may be given.
- (m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.
- (n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by its obligees of any covenant, condition or Obligation.
- (o) Covenant and prescribe as to events of default and terms and conditions upon which any or all its Obligations become or may be declared due before maturity, and as to

the terms and conditions upon which such declaration and its consequences may be waived.

- (p) Vest in any obligees or any proportion of them the right to enforce the payment of the Obligations or any covenants securing or relating to the Obligations.
- (q) Exercise all or any part or combination of the powers granted in these sections.
- (r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.
- (s) Make any covenants and do any acts and things necessary or convenient or desirable to secure its Obligations, or, at the absolute discretion of the CPU, tending to make the Obligations more marketable although the covenants, acts or things not enumerated in this section. All covenants and all acts by or of the CPU shall be at all times lawful and business-like and be based on sound business judgment as well as established current accounting/auditing standards and shall follow all applicable rules and regulations.

ARTICLE VII

SOLID WASTE

This Title shall be applicable to any Person generating, producing, storing, or recycling, treating, disposing or permitting the storage or disposal of Solid Waste, or any person responsible for open burning, within the Crow Reservation. Any person who has generated or received any Solid Waste shall be responsible for the proper storage, removal, transport, treatment, and disposal of such waste at a transfer station or other approved site.

When Solid Waste is dumped or deposited in violation of this Title, in the event there is no other evidence available, if there are three (3) or more items in the waste identifying the same person as the owner or recipient of that item, there shall be a rebuttable presumption that such person is responsible for the unlawful dumping of the waste.

Any person who by contract, agreement, or otherwise arranges for the recovery, transport, recycling, treatment, storage, disposal, or dumping of Solid Waste is responsible for complying with the provisions of this Ordinance and regulations promulgated hereunder regarding that waste.

ARTICLE VIII

PROHIBITED ACTS

1. **Open Dumping:** The dumping of Solid Waste anywhere other than an operating transfer station or other approved site within the Tribe's jurisdictional boundaries is prohibited.

Dumping or discarding any type of waste into or near a body of water within the Tribe's jurisdictional boundaries is prohibited and may carry higher penalties.

2. **Littering:** Discarding a small amount (less than two kilograms) of Solid Waste that is not also Hazardous Waste anywhere other than in a trash receptacle or other appropriate container within the Tribe's jurisdictional boundaries is prohibited.

It is expressly prohibited for any person to dump, drop, throw, discard, or otherwise dispose of litter upon any road or on any public or private property. Any person transporting Solid Waste or other waste shall cover, tie, or otherwise secure the waste so that it will not be blown or dropped from the transport.

3. **Improper Disposal of Hazardous Waste:** Storing, treating, or disposing of Hazardous Waste anywhere other than an authorized hazardous waste facility within the Crow Reservation is prohibited. This prohibition does not apply to Household Hazardous Waste that is not a regulated Hazardous Waste and that may be lawfully disposed of at a solid waste facility.
4. **Improper Disposal of Pesticide Waste:** Discarding pesticides anywhere within the Crow Reservation in any manner that may present a risk of harm to humans, animals, or the environment is prohibited. Pesticide containers must be drained or emptied according to label directions and power or triple-rinsed before processing or disposal.
5. **Improper Disposal of Black Water and Grey Water:** Disposing of Black Water or Grey Water anywhere other than designated dump sites within the Crow Reservation is prohibited.
6. **Improper Disposal of Solid Waste into Sewer Systems:** Disposing of any Solid Waste other than Black Water or Grey Water into the Sewer Systems is prohibited.
7. **Open Burning:** Open burning within the Crow Reservation without written permission from the CEPA is prohibited.
8. **Profiting From or Allowing Open Dumping:** Knowingly accommodating open dumping on the Crow Reservation and/or receiving payment for such accommodations is prohibited.
9. **Waste Accumulation:** Accumulating Solid Waste or other waste on public or private land in such a manner as to create a nuisance is prohibited.

ARTICLE IX

RECYCLING

It is the Tribe's goal to reduce the amount of Solid Waste generated by households, businesses, and tribal government. Whenever possible, the Tribe shall strive to use and to purchase materials and supplies that are made from recycled materials if the use is practical and cost-effective. The Tribe shall establish a recycling program.

ARTICLE X

ENFORCEMENT BY CEPA

The Crow Tribe hereby designates the Crow Environmental Protection Agency (CEPA) to be the administrative and enforcement authority entrusted with the duty and responsibility of ensuring the proper handling, treatment, and disposal of solid, hazardous, and other waste within the Crow Reservation and ensuring compliance by all persons with this Ordinance, including regulations promulgated pursuant to this Ordinance. The CEPA shall be a regulatory agency of the Crow Tribal Executive Branch, separate from the CPU. The CEPA shall report to the Tribe.

The Tribe may request enforcement by tribal, federal, state, and local agencies of their respective laws governing open burning and solid and Hazardous Waste handling, treatment, storage, and disposal.

1. **Enforcement Authority:** Tribal enforcement authority under this Title is hereby provided to the CEPA. The CEPA shall have the following authority:
 - (a) To hold regular and special meetings, as necessary;
 - (b) To adopt regulations, policies, procedures, and fees necessary for enforcement of this Ordinance;
 - (c) To investigate and charge violations of this Ordinance;
 - (d) To guard against the introduction of hazardous materials and waste;
 - (e) To supervise or collaborate with Federal or other government agencies on the clean-up of contaminated sites, including offsite transportation, treatment and disposal of wastes, contaminated media and debris from such sites;
 - (f) To adopt rules and regulations on sanitation and safety which may affect public health; and
 - (g) To prohibit or limit the use of places contaminated with hazardous materials.
 - (h) All regulations, rules, policies, and procedures promulgated, adopted, or amended by the CEPA under the authority of this Title 22 shall be subject to final approval by the Legislature through Joint Action Resolution prior to taking effect as tribal law.
2. **Investigative Authority:** When the CEPA has reasonable cause to believe that a violation of this Ordinance has occurred, the CEPA may:

- (a) Enter any premises, dwelling, or housing structure where the CEPA has reasonable cause to believe that a violation of this Ordinance has been or is being committed;
- (b) Investigate and make inspections into alleged violations of this Ordinance;
- (c) Request information from involved agencies, witnesses, or agencies or individuals suspected of a violation;
- (d) If denied entry, apply to the Crow Tribal Court for a warrant to enter, investigate, and inspect any premises; and
- (e) Refer to the appropriate prosecutorial authority for criminal prosecution any acts (including failures to act) that may constitute a criminal violation under federal, state or tribal law. After consultation with the criminal prosecutor, the CEPA may initiate civil enforcement to obtain appropriate remedial or other relief pursuant to paragraphs 3 and 4 below.

3. **Notice of Violation:** If, after investigating, the CEPA determines that it has reasonable cause to believe that a civil violation of this Ordinance has been committed, it shall issue a notice of civil violation that:

- (a) Specifies the landowner, party, or parties believed to be responsible for the violation, date of violation, citation to the section of this Ordinance allegedly violated, and a general statement of the facts supporting a finding that this Ordinance has been violated;
- (b) Notifies the party charged that they must immediately cease and desist the violation;
- (c) Identifies proposed remedial actions if any are appropriate under the circumstances;
- (d) Provides the party charged with a hearing date on which an administrative hearings officer appointed through the CEPA shall consider the notice of violation, which shall be no earlier than twenty (20) days and no later than forty-five (45) days from personal delivery or certified mailing of the notice of violation;
- (e) Notifies the party charged that they have the right to obtain copies of unprotected investigative documents and the method of obtaining copies; protected Tribal documents include, but are not limited to, proprietary financial information and tribal employee record information;
- (f) Notifies the party charged that they may deliver to the CEPA a written defense to the notice of violation within fifteen (15) days of the date of service of the notice violation;

- (g) Notifies the party charged that failure to file a notice of defense shall constitute a waiver of their right to a hearing and that the administrative hearings officer shall proceed to issue a notice of decision specifying enforcement actions and fines; and
 - (h) Notifies the party charged that both it and the CEPA shall have the right to make a written request for appropriate discovery.
4. **Enforcement Actions:** If the administrative hearings officer determines that a violation of this Ordinance has occurred, they may include any of the following enforcement actions in the notice of decision:
- (a) A warning explaining what violation(s) of the Ordinance took place;
 - (b) An order specifying the remedial measures required for compliance with the Ordinance, which may include clean up or abatement;
 - (c) A fine not to exceed \$5,000 per day per violation;
 - (d) An injunction prohibiting further violations of this Ordinance;
 - (e) A requirement that notice must be given to the tribal community for violations;
 - (f) An order to withhold a deposit previously paid to the Tribe by the violator;
 - (g) An order to withhold in part or in whole a per capita payment to a tribal member;
 - (h) An order to terminate any tribal contract related to the violation;
 - (i) An order to initiate an action in Tribal Court; and
 - (j) An order including any other appropriate requirements to mitigate the environmental or human health threats or harm(s) caused by the violation(s).
5. **Tribal Court:** The Tribal Court shall have civil and criminal jurisdiction to enjoin violations of this Title, to assess penalties and grant such additional relief as it deems necessary or appropriate to secure compliance with the provisions of this Ordinance or regulations adopted hereunder.

Any person over whom the Tribal Court can exercise criminal jurisdiction, and who is found in criminal violation of any provision of this Ordinance or regulations adopted hereunder, shall upon conviction in Tribal Court, be guilty of a criminal offense. Such person shall be subject to a fine not to exceed \$5,000 per day per violation and may also be subject to imprisonment for not more than one year.

6. **Appeal:** A person may appeal a notice of decision in Crow Tribal Court. If a party has been ordered to cease and desist a violation, the order shall remain in place until otherwise ordered by the Crow Tribal Court.
7. **Reports:** The CEPA shall provide biannual reports to the Executive Branch and the Crow Legislative Infrastructure Committee on notices of violation, enforcement actions, administrative hearings decisions, and appeals.

ARTICLE XI

MISCELLANEOUS

1. Any provision of this Ordinance or its application to any person in any circumstance that is declared invalid shall be severed from the Ordinance and the remaining provisions or applications shall remain in effect and enforceable.
2. Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Crow Tribe, its officers, or its businesses. Sovereign immunity is only waived if the Tribe, its officers, or its businesses specifically and formally waives immunity in full accordance with the Crow Tribal Constitution.
3. The Utility Board shall submit biannual reports, signed by the Chairman of the Board to the Crow Tribal Chairman and the Speaker of the House of the Legislative Branch showing: (a) a summary of the immediate prior quarter's activities and a summary of the year's to date activities, (b) the financial condition of the CPU, (c) the condition of the properties, (d) the kinds, number and facilities maintained (e) any significant problems and accomplishments (f) plans for the future, and (g) such other information as the CPU or the Chairman or the Speaker of the House deems pertinent.
4. During their tenure and for one year thereafter, no commissioner, officer or employee of the CPU, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisitions, they disclose their interest in writing to the CPU and such disclosure is entered upon the minutes of the CPU, and the commissioner, officer or employee shall not participate in any action by the CPU relating to the facility or contract in which they have any such interest. If any commissioner, officer or employee of the CPU involuntarily acquires any such interest, or voluntarily or involuntarily acquired by such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee shall not participate in any action by the CPU relating to the facility or contract in which they have such interest. Any violations of the foregoing provisions of this section, or the conflict-of-interest prohibitions contained in Article 4.14, shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in Obligations of the CPU issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in

connection with a project or to act as trustee under any trust indenture, or to water and waste water services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Article IV, foregoing.

5. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.
6. The property of the CPU and the CEPA is public property used for essential public and governmental purposes and such property and the CPU and the CEPA are exempt from all taxes and special assessments of the Tribe.
7. All property including funds acquired or held by the CPU and the CEPA pursuant to this Ordinance shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the CPU or the CEPA be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the CPU or the CEPA on its rents, fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant to the provisions of this ordinance.

ARTICLE XII

COOPERATION IN CONNECTION WITH PROJECTS

1. For aiding and cooperating in the planning, undertaking, construction or operation of projects, the Tribe hereby agrees that:
 - (a) It will not levy or impose any real or personal property taxes or special assessments upon the CPU or the CEPA or any project of the CPU or the CEPA.
 - (b) It will furnish or cause to be furnished to the CPU and CEPA and the house-households, governmental agencies or persons served, all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time.
 - (c) It will do all things, within its lawful powers, necessary, convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.
 - (d) The Tribal government hereby declares that the powers of the tribal government shall be vigorously utilized to enforce collection for nonpayment or other contract violations including service interruption and action through appropriate courts.
 - (e) The Tribal courts shall have jurisdiction to hear and determine an action for collection from a customer or consumer. The Tribal Government hereby declares

that the powers of the tribal courts shall be vigorously utilized to collect for nonpayment or other contract violations.

2. The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed or modified without the consent of the other party including governmental, private or other so long as (a) the project is owned by a public body or governmental agency and is used for solid waste, drinking water and waste water services on the reservation, (b) any contract between the CPU and the other party including governmental, private or other for loans or methods of funding in connection with any such project, remains in force and effect, or (c) any Obligations issued in connection with such project or any monies due to the other party including governmental, private or other in connection with such project remain unpaid, which period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development and operation of water, wastewater or other water and wastewater projects, including the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

ARTICLE XIII

JURISDICTION

The Crow Tribe and the Crow Tribal Court are vested with the fullest personal, subject matter, and territorial jurisdiction permissible under applicable law. This Ordinance shall apply to the conduct of all persons within the Crow Reservation where the conduct involves the maintenance and protection of the environment, natural resources, public health, safety, welfare, political integrity, and economic wellbeing of the Tribe. This Ordinance and any rules and regulations adopted hereunder, shall apply to:

1. All persons within the exterior boundaries of the Reservation, including but not limited to all Crow tribal members, members of other tribes, and non-Indians; and
2. All places and lands located anywhere within the exterior boundaries of the Crow Reservation, including all trust and non-trust land, notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or any real property interest of any kind, held by any person.

ARTICLE XIV

APPROVAL BY THE SECRETARY OF INTERIOR OR HIS OR HER DESIGNEE

With respect to any financial assistance contract or contracts between or among the CPU and the various agencies of the Federal government, the CPU shall obtain the approval of the Secretary of the Interior or his or her designee if required by law.