

APPENDIX II

APPLICATION AND SUPPORTING MATERIALS FOR AUTHORIZATION

UNDER CLEAN WATER ACT 518 FOR PURPOSES OF ADMINISTERING WATER

QUALITY STANDARDS AND CERTIFICATION PROGRAMS UNDER §§ 303(c) and 401

Seneca Nation of Indians

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PRESIDENT'S OFFICE

March 28, 2018

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

RE: Seneca Nation's Application for Recognition of Eligibility for CWA § 106 Grant and for Authorization to Implement Water Quality Standards and Certification Programs Under CWA §§ 303 and 401

Dear Mr. Lopez:

The Seneca Nation of Indians is applying to the U.S. Environmental Protection Agency under Section 518(e) of the Clean Water Act, 33 U.S.C. § 1377(e), for eligibility to obtain a grant under CWA § 106, 33 U.S.C. § 1256, and to administer a water quality standards program pursuant to CWA § 303, 33 U.S.C. § 1313, and a water quality certification program under CWA § 401, 33 U.S.C. § 1341. The application and supporting documentation are included with this letter.

Thank you in advance for your prompt attention to this matter. If you have any questions, please do not hesitate to contact Lisa Maybee, Director, Seneca Nation Environmental Protection Department, at 716-532-4900 ex. 5445, lisa.maybee@sni.org, or Jill Grant, environmental attorney for the Seneca Nation, at 202-821-1950, jgrant@jillgrantlaw.com.

Sincerely yours,

Todd Gates
President, Seneca Nation

cc: Argie Cirillo, Assistant Regional Counsel, EPA Region 2

U.S. EPA REGION 2
CONTROLLED CORRESPONDENCE

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LEGAL DEPARTMENT

STATEMENT OF LEGAL COUNSEL FOR THE SENECA NATION OF INDIANS REGARDING REGULATORY AUTHORITY AND JURISDICTION TO ADMINISTER A CWA § 106 GRANT AND CWA §§ 303 AND 401 WATER QUALITY STANDARDS AND CERTIFICATION PROGRAMS

The Seneca Nation of Indians (“Nation” or “SNI”) submits this jurisdictional statement as part of its application for recognition of eligibility (“Application”) under Section 518(e) of the Clean Water Act (“CWA”), 33 U.S.C. § 1377(e), to receive and administer a grant under CWA § 106, 33 U.S.C. § 1256, and to administer water quality standards and certification programs under CWA §§ 303 and 401, 33 U.S.C. §§ 1313 and 1341. The Nation asserts authority to obtain this grant and administer these programs over all waters within the Seneca Nation Territories.

I. The Seneca Nation Territories are Equivalent to “Reservation” under CWA § 518(e)

The Seneca Nation Territories consist of five areas located in Western New York: the Allegany Territory; the Cattaraugus Territory; the Oil Spring Territory; the Buffalo Creek Territory; and the Niagara Falls Territory. *See* map attached as Application Exhibit 3.

The Allegany Territory consists of 31,180.9 acres and is located along the Allegany River in Cattaraugus County, New York, around 70 miles south of Buffalo. Approximately 10,000 acres were taken by the United States on permanent easement for the Kinzua Dam and Reservoir and were inundated following construction of those facilities. The Cattaraugus Territory consists of 22,060.8 acres and is located along Cattaraugus Creek in Cattaraugus, Chautauqua and Erie Counties, New York. The Oil Spring Territory consists of 641.9 acres near Cuba, New York on the border of Cattaraugus and Allegany Counties.

The Buffalo Creek Territory is located in Buffalo City in Erie County, New York and is just under 10 acres. The Niagara Falls Territory is located in Niagara Falls City in Niagara County, New York and is approximately 56.2 acres. Both areas were acquired in connection with the New York State Gaming Compact.

These five Territories constitute the Nation’s “reservation” for purposes of CWA § 518(e), as discussed below.¹

¹ The Buffalo Creek and Niagara Falls Territories do not contain any surface waters, and therefore the Seneca Nation Environmental Protection Department would not be administering CWA water quality standards or certification programs in those Territories.

A. The Meaning of “Reservation” under CWA § 518(e)

CWA § 518(e)(2) provides that an Indian tribe is eligible to administer various CWA programs if:

the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

An “Indian reservation” is defined under the Clean Water Act as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.” CWA § 518(h); *see also* 40 C.F.R. §§ 35.582, 131.3(k).

In its rulemaking establishing requirements for tribal eligibility applications under CWA §§ 303 and 401, EPA interpreted the language of Section 518(e)(2) to mean that tribes are limited to obtaining approval for “lands within the boundaries of the reservation.” 56 Fed. Reg. 64876, 64881 (Dec. 12, 1991). EPA stated, however, that “the meaning of the term ‘reservation’ must, of course, be determined in light of statutory law and with reference to relevant case law” and that “it is the status and use of the land that determines if it is to be considered ‘within a reservation’ rather than the label attached to it.” *Id.* Thus, land may be considered part of a reservation even if it is tribal trust land outside the formal reservation boundaries. *See, e.g., Oklahoma Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993); *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991); *United States v. John*, 437 U.S. 634, 648 (1978); 56 Fed. Reg. at 64,881 (“EPA considers trust lands formally set apart for the use of Indians to be ‘within a reservation’ for purposes of section 518(e)(2), even if they have not been formally designated as ‘reservations.’”).

Moreover, land may be considered “reservation” even if a tribe holds title to the land rather than the United States holding title in trust for the tribe. *See, e.g., United States v. Chavez*, 290 U.S. 357 (1933); *United States v. Candelaria*, 271 U.S. 432 (1926); *United States v. Sandoval*, 231 U.S. 28, 48 (1913) (all holding that Pueblo lands, which consist at least in part of tribal fee lands, are equivalent to “reservation” land). As a result, EPA has approved numerous Pueblo CWA eligibility applications, finding that Pueblo fee land “is functionally equivalent to a reservation” for purposes of the CWA; “the type and extent of jurisdiction a Tribe exercises over a pueblo is equivalent to that it would exercise over a reservation [citing *Chavez* and *Sandoval*];” and “the fact that the Tribe holds title to the pueblo in fee, rather than having title held in trust for the Tribe by the United States is not an obstacle to reservation status [citing *Indian Country, U.S.A. v. Oklahoma Tax Commission*, 829 F.2d 967, 975 (10th Cir. 1987)].”² In *Indian Country, U.S.A.*, the court held

² Memorandum regarding Application of the Pojoaque Pueblo for Treatment as a State under Section 106 of the Clean Water Act (September 26, 1989), from Gerald H. Yamada, Acting General Counsel, to Rebecca Hammer, Acting Assistant Administrator for Water, at 3; Memorandum regarding Application of the Pueblo of Isleta for Treatment as a State under Section 106 of the Clean Water Act (May 3, 1990), from George R. Alexander, Jr., Regional Counsel, to Myron Knudson, Director, Water Management Division, at 3. *See also* EPA Approval of Pueblo of Taos Application for Treatment in the Same Manner as a State Under § 518 of the Clean Water Act (CWA) for Purposes of Administering CWA § 303(c) and § 401 (Decision Document, December 2005), at 8 (Pueblo of Taos’ fee lands “meet the test for being ‘within a reservation’”),

that “[p]atented fee title is likewise not an obstacle to either reservation or Indian country status of [tribal] lands,” 829 F.2d at 975. *See also Williams v. U.S.*, 215 F.2d 1, 3 (9th Cir. 1954) (issuance of patent in fee simple did not remove land from reservation); *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996) (upholding EPA’s approval of water quality standards for Pueblo of Isleta, which includes tribal fee land).

Here, where the Nation holds recognized title in restricted fee status in the Allegany, Cattaraugus, and Oil Spring Territories (as explained in more detail below), the Territories are equivalent to reservation land within the meaning of the Clean Water Act. *See Indian Country, U.S.A.*, 829 F.2d at 976 (tribally owned treaty lands “historically were considered Indian country and still retain their reservation status within the meaning of 18 U.S.C. § 1151(a)”). *See also In re New York Indians*, 72 U.S. 761, 763 (1866) (discussing Allegany and Cattaraugus “reservations”); *Seneca Nation of Indians v. Christy*, 162 U.S. 283 (1896) (discussing “Cattaraugus Indian reservation”); *Seneca Nation of Indians v. Appleby*, 196 N.Y. 318, 319 (1909) (referring to “lands commonly known as the Allegany and Cattaraugus reservations”); *Seneca Nation of Indians v. New York*, 206 F. Supp. 2d 448, 525 (W.D.N.Y. 2002), *aff’d*, 382 F.3d 245 (2d Cir. 2004) (discussing history of “Allegany and Cattaraugus reservations”); *Seneca Nation of Indians v. United States*, 12 Ind. Cl. Comm. 552, 556-57 (1963) (discussing the “Oil Spring Reservation”); Constitution of the Seneca Nation of Indians of 1848, as amended (Application, Exhibit 1) (referring to Allegany, Cattaraugus and Oil Spring “Reservations”).

The Buffalo Creek and Niagara Falls Territories were acquired with funding appropriated under a settlement act which specifically provided that lands acquired using such funding “shall be held in restricted fee status by the Seneca Nation,” Seneca Nation Settlement Act of 1990 (“SNSA”), 25 U.S.C. § 1774f(c). Therefore, they also are equivalent to “reservation” land under the Clean Water Act.³

B. The Restricted Fee Status of the Allegany, Cattaraugus, and Oil Spring Territories

SNI is the westernmost of the six Tribal Nations that comprise the Iroquois Confederacy or Six Nations, a democratic government predating the formation of the United States and located in what is now the Northeastern United States and Southeastern Canada. *Seneca Nation of Indians v. New York*, 206 F. Supp. 2d at 458. In 1794, the United States described and recognized a tract of land in Western New York as “the property of the Seneca nation” and acknowledged the Nation’s “free use and enjoyment thereof.” Treaty with the Six Nations (“Treaty of Canandaigua”), 7 Stat. 44 (Nov. 11, 1794); *Seneca Nation of Indians*, 206 F. Supp. 2d at 486-87. That land eventually became divided into the Allegany, Cattaraugus, and Oil Springs Territories. *See, e.g., United States v. City of Salamanca*, 27 F. Supp. 541, 544 (W.D.N.Y. 1939); *Citizens Against Casino Gambling in Erie Cty. v. Hogen (“CACGEC”)*, 2008 WL 2746566 (W.D.N.Y. July 8, 2008), at *7. The Treaty with the Senecas, 7 Stat. 586 (May 20, 1842), confirmed that SNI retained the “right and title” in the Allegany, Cattaraugus, and Oil Spring Territories that had been recognized in the 1794 Treaty of Canandaigua. *CACGEC* at *7 & n. 15, *8. Legal title to these

https://www.epa.gov/sites/production/files/2015-07/documents/pueblo_of_taos_approval_and_map.pdf; EPA Indian Tribal Approvals for the Water Quality Standards Program (listing eligibility approval dates for twelve Pueblos), available at <http://water.epa.gov/scitech/swguidance/standards/wqslibrary/approvable.cfm>.

³ Although the Territories also may be considered as dependent Indian communities under 18 U.S.C. § 1151(c), the same is true for Pueblo fee lands, which EPA views as equivalent to “reservations” for purpose of eligibility under CWA § 518(e), as discussed above.

territories “has never been in the United States.” *Seneca Nation of Indians*, 12 Ind. Cl. Comm. at 561.⁴

SNI thus has recognized title in the Allegany, Cattaraugus and Oil Spring Territories. Recognized title “is the equivalent of fee simple ownership,” *Seneca Nation of Indians v. New York*, 382 F.3d 245, 258 n. 15 (2d Cir. 2004). Further, the Nation holds these Territories in “restricted fee” status, *see Huron Grp., Inc. v. Pataki*, 785 N.Y.S.2d 827, 832 (Sup. Ct., Erie County 2004), meaning “that the lands cannot be sold or alienated by the Tribe or Nation for a certain period without approval by the United States,” *id.* at 832 n. 1, as a result of the Nonintercourse Act, Act of July 22, 1790, ch. 33, 1 Stat. 138 (codified at 25 U.S.C. § 177). *See Candelaria*, 271 U.S. at 442 (Nonintercourse Act imposes “a restriction on the alienation of [Indian] lands”). This restriction on alienation makes the Allegany, Cattaraugus and Oil Spring Territories part of the Nation’s “reservation” under CWA § 518(e)(2), just as trust land under federal jurisdiction is considered “reservation” land for purposes of CWA § 518.

C. The Restricted Fee Status of the Buffalo Creek and Niagara Falls Territories

As noted above, the Nation also holds the Buffalo Creek and Niagara Falls Territories in restricted fee status. The Nation acquired these two land areas with funding appropriated under the SNSA, 25 U.S.C. §§ 1774-1774h. The SNSA provides, in relevant part:

Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this subchapter Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be subject to the provisions of that Act [the Nonintercourse Act] and shall be held in restricted fee status by the Seneca Nation.

25 U.S.C. § 1774f(c).

Two years before passing the SNSA, Congress enacted the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721. IGRA requires that all gaming activities take place on “Indian lands” within a tribe’s jurisdiction, *see* 25 U.S.C. § 2710(a)(1), (b)(1), (d)(1)(A)(i), (d)(2)(A). IGRA defines “Indian lands” as “(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.”

Under the 2002 “Nation-State Gaming Compact Between the Seneca Nation of Indians and the State of New York,” which was entered into by those entities pursuant to IGRA, 25 U.S.C. §

⁴ The land base of the Cattaraugus Territory has remained undisturbed since the time of the 1842 Treaty. However, the Allegany land base remained intact only until 1963, when the United States, by condemnation, acquired flowage rights and easements on approximately 10,000 acres of that territory as part of the Allegheny River Reservoir (Kinzoa Dam) project. *United States v. 1132.5 Acres of Land*, 441 F.2d 356, 357 (2d Cir. 1971); *CACGEC* at *8.

The Nation’s ownership of a portion of the Oil Spring Territory was challenged in the past but the case was resolved in SNI’s favor. *See Seneca Nation of Indians v. New York*, 26 F. Supp. 2d 555 (W.D.N.Y. 1998), *aff’d*, 178 F.3d 95 (2d Cir. 1999); Consent Decree and Final Judgment, Case No. 85-CV-411C (June 23, 2005) (confirming SNI’s ownership of and title to the property at issue). An additional 54 acres was added to the Oil Spring Territory in November 2016.

2710(d)(1)(C), SNI is authorized to establish gaming facilities: (1) at a specified site in Niagara Falls City, (2) at an unspecified site in Buffalo City, and (3) “on current Nation reservation territory.”⁵ The Nation purchased the Niagara Falls Territory in 2002, using SNSA funds, and holds the site in restricted fee status pursuant to the SNSA. *See Citizens Against Casino Gambling in Erie Cnty. v. Kempthorne*, 471 F. Supp. 2d 295, 309, 325 n. 23 (W.D.N.Y. 2007), *amended on reconsideration in part*, 2007 WL 1200473 (W.D.N.Y. Apr. 20, 2007). In 2005, the Nation used SNSA funds to purchase the Buffalo Creek Territory, which also “assumed restricted fee status by operation of law” pursuant to 25 U.S.C. § 1174f(c). *CACGEC* at *16. As discussed above, Seneca lands held in restricted fee status are “reservation” lands for purposes of CWA § 518(e).

II. Basis for SNI Assertion of CWA Authority over the Seneca Nation Territories

A. Express Congressional Delegation of Authority

The basis for the Nation’s assertion of authority under this Application is CWA § 518(e), which contains an express congressional delegation of authority to eligible Indian Tribes to administer CWA programs for all water resources within their reservations. This delegation is discussed in EPA’s *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016) (“Reinterpretation”), and it extends to both formal and informal reservations, *id.* at 30192, and to nonmember activities within reservations, *id.* at 30190. As discussed above, the Seneca Nation Territories are equivalent to “reservation” under CWA § 518(e). Moreover, because the Nation’s CWA regulatory authority derives from a congressional delegation, no analysis of the Nation’s authority to regulate non-Indian activities is required. *Reinterpretation* at 30183, 30190; *Ariz. Public Serv. Co. v. EPA*, 211 F.3d 1280, 1287-92, *cert. denied sub nom. Michigan v. EPA*, 532 U.S. 970 (2001).

B. The Nation’s Inherent Authority

The Nation’s assertion of authority under this Application is also based on the Nation’s inherent regulatory authority over its Territories. In order to protect the political integrity, economic security, and health and welfare of its members and other residents on the Seneca Nation Territories, *see Montana v. United States*, 450 U.S. 544, 565-66 (1981), and in furtherance of its continued desire for its “national preservation, growth and prosperity,” as expressed in the introduction to the Constitution of the Seneca Nation of Indians of 1848, as amended (Application, Exhibit 1), the Nation is exercising its inherent authority to protect and preserve the quality of SNI waters by having its Environmental Protection Department (“EPD”) develop various Clean Water Act programs, including the water quality standards and certification programs directly at issue. The Nation may exercise this inherent authority over non-Indians on its Territories as well as over Indians, pursuant to *Montana*.

Some of the activities that the Nation may seek to regulate under its CWA water quality standards and certification programs may be conducted by non-Indians.⁶ Under *Montana*, when a tribe seeks to regulate, under its inherent authority, the activities of non-Indians on non-Indian fee land within its reservation, the tribe must demonstrate either that the non-Indians have entered into “consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements” (prong 1 of *Montana*), or that the conduct the tribe seeks to regulate

⁵ The compact was approved by the Department of Interior in 2002 pursuant to 25 U.S.C. § 2710(d)(8)(C). *See* DOI, Notice of Nation-State Gaming Compact Taking Effect, 67 Fed. Reg. 72968 (Dec. 9, 2002).

⁶ The CWA § 106 grant is not a regulatory program and so it does not implicate *Montana*.

“threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe” (prong 2 of *Montana*). *Montana v. United States*, 450 U.S. at 565-66.

As indicated above, the actual holding of *Montana* was limited to non-Indian activities located on non-Indian fee lands within a reservation, and there are no such lands within the Seneca Nation Territories (see Section I.C, above). See, e.g., *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-45 (1982) (recognizing inherent tribal authority to exclude non-Indians from tribal land, without applying *Montana*); *Montana*, 544 U.S. at 557 (recognizing tribe’s inherent authority to exclude and so to regulate non-Indians on tribal land as different from tribal authority over non-Indians on non-tribal land); *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802 (9th Cir. 2011) (same).

Moreover, subsequent Supreme Court cases indicating otherwise are inapposite, for two reasons: their holdings are limited to narrow situations that do not apply here, as in *Nevada v. Hicks*, 533 U.S. 353, 358 n.2 (2001) (“Our holding in this case is limited to the question of tribal-court jurisdiction over state officers enforcing state law”), accord *Wisconsin v. EPA*, 266 F.3d 741, 748 (7th Cir. 2001); and their discussions of an expansion of *Montana* to tribal lands were expressed in *dicta* only, e.g. *Hicks*, *id.* at 386 (Ginsburg, J., concurring).⁷ Nevertheless, to cover all possibilities, the Nation demonstrates below that the non-Indian activities it may regulate under the CWA would meet the “*Montana* test,” regardless of the status of the land on which those non-Indian activities or facilities may be located, and so the Nation satisfies even an expansive reading of *Montana*.

1. *Regulation of non-Indian activities impacting water quality meets the first prong of the Montana test*

Many of the non-Indian activities taking place on the Seneca Nation Territories and impacting water quality involve farming and related agricultural activities, such as pesticide and herbicide application. There is also some sand and gravel mining by non-Indians on SNI land that may affect the Nation’s waters. In addition, some non-Indians own gas stations on the Nation and therefore own or operate petroleum storage tanks which, if leaks occur, could impact water quality. All of these activities occur pursuant to leases or other commercial agreements with SNI members, because only SNI members may own land within the Seneca Nation Territories. These agreements constitute precisely the type of commercial consensual relationship that is subject to the inherent authority retained by tribes over non-Indians, as specifically stated in the first prong of the *Montana* test. 450 U.S. at 565. See, e.g., *Merrion* (affirming tribal authority to tax oil and gas production by non-Indian lessees on tribal trust land); *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 653 (2001) (discussing *Merrion*).

Moreover, SNI requires permits for any pesticide or herbicide application, sand or gravel mining, or installation or operation of underground or above-ground storage tanks containing petroleum or other hazardous substances. See Application, Exhibits 3.5, 3.6, and 3.8. Any non-

⁷ Similarly, in *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 328 (2008), although the Court implied that a tribe must satisfy the *Montana* test to regulate non-Indians on tribal land, the issue was not actually before the Court. First, the land at issue in the case was non-Indian fee land within a reservation, as in *Montana*. Second, the Court found that sale of non-Indian fee land was not a nonmember “activity,” see, e.g., *id.* at 330, 332, and so could not be regulated by the tribe under *Montana* in any event, *id.* at 332-35. The Court’s statements as to the type of conduct that meets the second *Montana* exception also are *dicta*, since the Court found that the bank’s sale of non-Indian fee land was not “conduct” under that exception. See, e.g., 554 U.S. at 329, 333-36 (the latter referring to “the distinction between sale of the land and conduct on it”).

Indian obtaining such a permit is entering into a consensual relationship with the Nation, in addition to the consensual relationship already created by the lease.

The other non-Indian activities with the potential to affect the Nation's water quality occur in the City of Salamanca, "which is an integral part of the Seneca Nation's Allegany Reservation," SNSA, 25 U.S.C. § 1774d(b)(2), and contains non-Indian residences and businesses that may affect water quality. In addition, the city operates a wastewater treatment facility that discharges into the Allegany River within the Allegany Territory. As provided by the SNSA and discussed above, all non-Indians residing or having businesses in Salamanca are required to have leases, and therefore any non-Indian activities must be conducted pursuant to those leases, thereby becoming subject to the Nation's jurisdiction under the first prong of *Montana*.⁸

Non-Indians also fish in SNI waters. These activities are already regulated by the Seneca Nation Fish & Wildlife Department and are more likely to be benefited by SNI water quality standards than to cause impacts on water quality. In any event, non-Indians must obtain fishing and hunting licenses from the Seneca Nation Fish & Wildlife Department, thus entering into a consensual relationship meeting the first prong of *Montana*.

Further, the CWA programs that the Seneca Nation EPD seeks to implement and the matters that EPD seeks to regulate have a nexus to the consensual relationship itself. *See Atkinson*, 532 U.S. at 656. The Nation will be directly regulating facilities and activities that are constructed and operated or undertaken subject to the leases and licenses that form the basis of the commercial consensual relationships at issue.

2. *Regulation of non-Indian activities impacting water quality meets the second prong of the Montana test*

In addition, by its very nature, regulation of water quality would protect the health, welfare, political integrity and economic security of the Seneca Nation, and therefore all the activities that SNI may seek to regulate under the CWA programs at issue here would meet the second prong of *Montana*.

In its Reinterpretation, EPA explained that tribes applying for eligibility for CWA programs would most likely meet the second prong of *Montana* based upon EPA's generalized findings regarding the relationship between water quality and tribal health and welfare. 81 Fed. Reg. at 30189. EPA anticipated that a tribe's factual demonstration would be a relatively simple showing under established Indian law principles, "given the importance of surface water to tribes and their members, the serious nature of water pollution impacts, and the mobility of pollutants in water." *Id.* at 30189, 30194.

Moreover, EPA's tribal eligibility rule under Sections 303 and 401 of the Clean Water Act, 56 Fed. Reg. 64,876, 64,878 (Dec. 12, 1991), acknowledged that "the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare," and indicated that the Clean Water Act itself constitutes a legislative determination that activities affecting water quality have serious and substantial impacts. *Id.* at 64,878. As EPA noted,

the primary objective of the [Clean Water Act] "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" [Section 101(a)]

⁸ A sample lease agreement between SNI and a lessee within the City of Salamanca is included with this jurisdictional statement as Attachment 1.

and, to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants into the navigable waters of the U.S. and attaining a level of water quality which is fishable and swimmable [Section 101(a)(1)-(2)]. Thus the statute itself constitutes, in effect, a legislative determination that activities which affect surface water and critical habitat quality may have serious and substantial impacts.

Id. Further, EPA noted that “clean water, including critical habitat..., is absolutely crucial to the survival of many Indian reservations,” and that “because of the mobile nature of pollutants in surface waters...it would be practically very difficult to separate out the effects of water quality impairment on non-Indian fee land within a reservation with those on tribal portions.” *Id.*

Clean water and critical habitat are indeed crucial to the Nation. To begin with, the Seneca world view is a holistic one in which the air, water, people, and wildlife are all related to one another. SNI waters are used by the Nation and its members for drinking, crop irrigation, livestock watering, hunting and fishing, and traditional and ceremonial uses. Clean water also is crucial to wildlife, including birds, and is a critical factor in providing habitat for wildlife and native plants, many of which are culturally significant to the Nation. The Nation has relied on its water resources for physical, cultural, and spiritual survival long before the arrival of Europeans, and preservation and protection of those resources is essential to the way of life, welfare, and prosperity of the Nation to this day. Any impairment of the Nation’s waters would therefore have a serious and substantial impact on the health, welfare, political integrity and economic security of the Nation and its members.

Degradation of water quality could have additional adverse economic impacts for the Nation. SNI members not only use the Nation’s surface waters themselves for irrigation but also derive revenue by leasing agricultural lands to non-Indians who in turn rely on those waters for irrigation. The Seneca Nation Fish & Wildlife Department issues licenses for hunting and fishing, which not only assist in the maintenance and protection of wildlife resources but also are a source of revenue. For example, Cattaraugus Creek is known for its population of steelhead trout and walleye, which attracts many non-Indian fishermen to SNI waters.

Further, as noted above, the surface waters themselves are important to the Seneca Nation. Tribal ceremonial practitioners are aware of the exact locations of natural springs and other water sources that are used in religious and ceremonial observances. Senecas believe that “water is life because it quenches our thirst and makes us strong.” Maintaining the quality of those waters also is vital to the protection of the wildlife, plants, and fisheries that are a part of SNI culture, and so could have an impact on traditional uses of these resources. Seneca Nation’s traditional ceremonies and practices use feathers from specific birds, and the wildlife is used for consumption, along with many other significant uses. Traditionally, every part of the wildlife is used so there is no waste. In the Seneca language there is no word for “garbage.” Seneca Nation traditions also include fashioning implements from the bones of certain animals, baskets from specific trees, leather from specific animals, and most importantly numerous plants are used for traditional medicines, food, and ceremonies. Any adverse impacts on water quality, and indirect adverse impacts on plants and wildlife, would therefore impact the welfare of the Seneca Nation members and the political integrity of the Seneca Nation government, which is committed to protecting cultural and traditional religious practices.

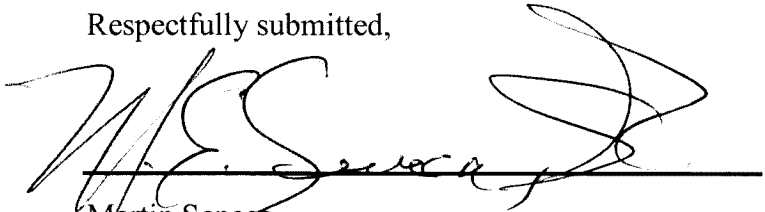
In sum, the Nation must be able to regulate water quality throughout the Seneca Nation Territories in order to exercise self-governance; protect its members and others within the

Territories by providing the clean water necessary to their health, safety, and welfare; and derive economic benefits.

III. Conclusion

Based on the foregoing discussion, it is the opinion of legal counsel to the Seneca Nation of Indians that there are no limitations or impediments to the Nation's authority or ability to accept and effectuate the express congressional delegation of authority contained in CWA § 518(e), as described in EPA's Reinterpretation and in this jurisdictional statement. In addition, SNI has inherent authority to administer the CWA § 106 grant and CWA §§ 303 and 401 water quality standards and certification programs for all surface waters within the Seneca Nation Reservation.

Respectfully submitted,



Martin Seneca
General Counsel, Seneca Nation

SENECA NATION OF INDIANS

**APPLICATION FOR RECOGNITION OF ELIGIBILITY FOR CWA § 106
GRANT AND FOR AUTHORIZATION TO IMPLEMENT WATER
QUALITY STANDARDS AND CERTIFICATION PROGRAMS UNDER
CWA §§ 303 AND 401**

SENECA NATION OF INDIANS
APPLICATION FOR RECOGNITION OF ELIGIBILITY FOR CWA § 106 GRANT
AND FOR AUTHORIZATION TO IMPLEMENT WATER QUALITY STANDARDS
AND CERTIFICATION PROGRAMS UNDER CWA §§ 303 AND 401

The Seneca Nation of Indians (“Nation” or “SNI”) is applying to the U.S. Environmental Protection Agency, Region 2 for recognition of its eligibility under Section 518(e) of the Clean Water Act (“CWA”), 33 U.S.C. § 1377(e), to obtain a grant under CWA § 106, 33 U.S.C. § 1256, and to administer a water quality standards program pursuant to CWA § 303, 33 U.S.C. § 1313, and a water quality certification program under CWA § 401, 33 U.S.C. § 1341. CWA § 106 provides for grants for pollution prevention, reduction, and elimination programs, including for the development of water quality standards and water quality certification programs. The Nation intends to develop those programs and to follow up on this application with an application for approval of those programs.

Pursuant to CWA § 518(e), in order to be found eligible for CWA § 106 grant funding or for water quality standards and certification programs under CWA §§ 303 and 401, SNI must demonstrate that: (1) it is an Indian tribe, as defined in CWA § 518(h)(2), 33 U.S.C. § 1377(h)(2); (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions it intends to exercise pertain to water resources within the borders of its reservation, as interpreted under the Clean Water Act; and (4) it has the capability to carry out those functions consistent with the Clean Water Act and applicable regulations. *See also* 40 C.F.R. §§ 35.583, 130.6(d), 131.8(a). In addition, to be eligible for a CWA § 106 grant, the Nation must have emergency authority to restrain pollution causing an imminent and substantial endangerment to public health or welfare and adequate contingency plans to implement such authority. CWA §§ 106(e)(2), 504, 33 U.S.C. §§ 1256(e)(2), 1364; 40 C.F.R. § 35.588(a)(2). In this application, the Nation demonstrates that it meets all of these requirements and thus is eligible to receive a Section 106 grant and to administer water quality standards and certification programs.

1. The Seneca Nation of Indians is a Federally Recognized Tribe Exercising Authority Over a Federal Indian Reservation [40 C.F.R. § 35.583; § 131.8(b)(1)].

CWA § 518(e) defines “Indian tribe” as “any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.” *Accord* 40 C.F.R. §§ 130.2(b); 131.3(l). The Seneca Nation of Indians is identified as a federally recognized tribe on the list of federally recognized tribes published in the Federal Register by the Secretary of the Interior. *See, e.g.*, 83 Fed. Reg. 4235, 4238 (January 30, 2018). The Nation exercises governmental authority over five areas of land: the Allegany Territory; Cattaraugus Territory; Oil Spring Territory; Buffalo Creek Territory; and Niagara Falls Territory. These five areas are referred to as the Seneca Nation Territories, and are shown on the map attached as Exhibit 1. They are equivalent to a “reservation,” as discussed in the jurisdictional statement attached as Exhibit 2.

2. The Seneca Nation of Indians has a Governing Body Carrying Out Substantial Government Duties and Powers [40 C.F.R. § 130.6(d)(1); § 131.8(b)(2)].

A. Form of Tribal Government [40 CF.R. § 131.8(b)(2)(i)]

The Seneca Nation government has been operating continuously for centuries. In 1848, the Nation adopted a constitution pursuant to its inherent sovereign authority. The Constitution, as amended (attached in Exhibit 3), provides for three branches of government: the legislative branch, composed of the Council; the executive branch, led by the President, Treasurer and Clerk; and the judicial branch, comprised of peacemaker, appellate and surrogate courts.

The Council is composed of 16 members, with 8 Councilors from the Allegany Territory and 8 Councilors from the Cattaraugus Territory, elected for staggered four-year terms. The Council, presided over by the President, has legislative authority over all of the lands and persons within the Nation's exterior boundaries (except to the extent precluded by federal law), to control the disposition of the Nation's lands, to handle both internal and external affairs, and generally to promote and protect the public health and welfare. In exercise of its governmental powers, the Council enacts ordinances pertaining to the affairs of the Nation and governing conduct within the Nation.

The President and other executive officers oversee the administrative and executive functions of the Nation. The President, Treasurer and Clerk are elected for two-year terms and leadership rotates every two years between residents of the Cattaraugus and Allegany Territories. The SNI headquarters correspondingly alternates every two years between the Cattaraugus and Allegany Territories.

The judicial branch consists of one Court of Appeals, two Peacemaker Courts (one in the Allegany Territory and one in the Cattaraugus Territory), and two Surrogate Courts (one in the Allegany Territory and one in the Cattaraugus Territory). These courts exercise the judicial powers of the Nation.

B. Governmental Functions Performed and Services Provided [40 CF.R. § 131.8(b)(2)(ii)]

The Nation performs essential governmental functions, including exercising police powers related to public health, safety and welfare, and has extensive experience providing governmental services, such as law enforcement, social services and education. For example, the Seneca Nation government includes Departments of Conservation (including Fish & Wildlife), Disability Assistance, Employment, Education, Environmental Protection, Housing, Public Works, and Sanitation, among others, as well as the Marshal's Office (which enforces Seneca laws), as shown on the organizational chart attached as Exhibit 4.

In particular, the Environmental Protection Department ("EPD" or "Department") is responsible for environmental regulation and permitting within the Seneca Nation Territories and will administer the programs funded by CWA § 106. The Department was created in 1992 and is based in the Cattaraugus Territory. It has qualified environmental professionals to oversee implementation of its environmental programs, as discussed in Section 4 below. Environmental program activities are directed by the Council or the Executive Office and are prioritized according

to their impacts on human health and the natural environment. An EPD Organizational Chart is also included in Exhibit 4.

C. *Sources of Authority [40 C.F.R. § 131.8(b)(2)(iii)]*

The Nation's authority to carry out these governmental functions and provide these governmental services is derived from its inherent sovereign authority; its Constitution and laws; and federal treaties and laws, including the 1794 Treaty of Canandaigua and the 1842 Buffalo Creek Treaty (acknowledging the Nation's territory as its property and guaranteeing the Nation's full use and enjoyment of that land). The Nation's Constitution, the 1794 and 1842 Treaties, and relevant SNI laws are included in Exhibit 3.

3. The Seneca Nation of Indians has Authority over All Water Resources within the Seneca Nation Territories [40 C.F.R. § 130.6(d)(2); § 131.8(b)(3)].

The Nation asserts authority under CWA § 518(e) to administer a CWA § 106 grant and CWA §§ 303 and 401 water quality standards and certification programs for all water resources within the Seneca Nation Territories. CWA § 518(e) contains an express congressional delegation of authority to eligible Indian Tribes to administer CWA regulatory programs over their entire reservations, as discussed in EPA's *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016), and it extends to all waters within both formal and informal reservations, *id.* at 30192, and to nonmember activities, *id.* at 30190. As noted above in Section 1 and as discussed in the jurisdictional statement attached as Exhibit 2, the Seneca Nation Territories are equivalent to "reservation" under CWA § 518(e). There are no limitations or impediments to the Nation's ability to accept and effectuate this delegation of authority from Congress. In addition, the Nation has inherent authority to administer CWA regulatory programs within its Territories.

The maps attached as Exhibit 1 show the exterior boundaries of the five areas comprising the Seneca Nation Territories, as well as the major surface waters within each Territory. Included with the maps is a list of the surface waters within the Seneca Nation Territories, pursuant to 40 C.F.R. § 131.8(b)(3). This application also includes as Exhibit 2 a jurisdictional statement provided by the Nation's legal counsel demonstrating that the Nation's CWA §§ 106, 303, and 401 programs will pertain to "the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation." CWA § 518(e)(2).

4. The Seneca Nation of Indians has the Capability to Receive and Administer CWA § 106 Grants and to Administer Water Quality Standards and Certification Programs [40 C.F.R. § 130.6(d)(3); § 131.8(b)(4)].

A. *SNI Government Programs/Management Experience [40 C.F.R. § 131.8(b)(4)(i) and (iii)]*

The Nation's tripartite government, described in Section 2 above, currently employs over 1,000 governmental staff who carry out the Nation's governmental functions and programs. The Nation and its staff have many years of experience providing services in all areas of government, both through the departments listed in Section 2 and in addition by providing community centers; low-income and elder housing; veterans' services; employment and training programs; an early childhood learning center; libraries; Seneca language classes; fire and rescue services; and a transit system.

The Nation also manages numerous federal and state grants, including from the U.S. Department of Agriculture, U.S. Department of Energy, U.S. Department of Health and Human Services (including the Indian Health Service), U.S. Department of Housing and Urban Development, U.S. Department of the Interior (including the Bureau of Indian Affairs and U.S. Fish and Wildlife Service), U.S. Department of Justice, U.S. Department of Transportation, U.S. Environmental Protection Agency, New York State Office for the Aging, New York State Department of Health, and New York State Department of Education, and manages Indian Self-Determination contracts and grants and grants from the Administration for Native Americans, among others.

B. SNI Public Health and Environmental Programs [40 C.F.R. § 131.8(b)(4)(ii)]

As part of its capabilities, the Nation administers various programs with an impact on public health. For example, the Nation provides drinking water and sanitary services through the Allegany Tribal Utilities Department. The Seneca Nation Health System operates two community health centers that provide comprehensive primary care. The Department of Emergency Management is tasked with developing a comprehensive emergency management program, in coordination with other Seneca Nation departments and agencies. The Nation also provides disability assistance, it has a food distribution program (NAFDPIR) for low- and fixed-income residents, and its Community Planning and Development Department is currently developing a new Seneca Nation Transportation Safety Plan.

In the environmental arena, the Nation has a Conservation Department, established in 1977, which is responsible for enforcing SNI laws addressing conservation and environmental concerns, including solid waste management. The Conservation Department includes a separate Fish & Wildlife Department, which regulates and issues licenses for hunting and fishing and also provides community and youth education on natural resource and environmental issues. The Seneca Nation Environmental Protection Department was established in 1992 to protect the Nation's natural environment, to restore and enhance environmental quality in areas that have been subject to degradation, and to ensure that any proposed development that may have significant adverse environmental impacts will undergo a thorough environmental review in which alternatives and mitigation measures are fully considered. The EPD is described in more detail below.

The Nation has enacted the following laws protecting public health and the environment: Comprehensive Conservation Law; Pesticide Ordinance; Sand and Gravel Permit Law; Source Water Protection Code; Underground and Above-Ground Storage Tank Act; and Waste Disposal Ordinance. Copies of these laws are included in Exhibit 3.

C. Seneca Nation Environmental Protection Department [40 C.F.R. § 131.8(b)(4)(iv)]

The EPD is currently headed by an Interim Director and employs eight other staff members. The Department incorporates several environmental programs, including programs for water and air quality standards, underground and aboveground storage tanks, solid waste, NEPA, Brownfields, and pesticides, as well as having a regulatory permit section that issues construction permits and pesticide application permits, and it has qualified environmental professionals to oversee program implementation.

The Water Quality Program Manager will have the primary responsibility for administering the CWA § 106 grant and implementing programs under it, including developing and administering CWA §§ 303 and 401 water quality standards and certification programs. She currently is assisted on water quality matters generally by the EPD Interim Director, and receives assistance with water quality sampling and monitoring from an environmental technician and an environmental associate. EPD plans to expand its Water Quality Program to include additional water quality staff and intends to use the CWA § 106 grant to assist with this goal.

Both the Water Quality Program Manager and the EPD Interim Director have a clear understanding of the Nation's water quality, impairments to water quality, and the quality of contributing watersheds. The program has been monitoring lakes and streams on the Seneca Nation's lands for over a decade. *See* CWA § 106(e)(1). The Water Quality Program also assesses habitat conditions and conducts biological surveys and research specific to each of the Nation's water bodies. The data that the program has collected has been used in lake management and watershed plans and will continue to help determine management strategies for Seneca Nation waters. Additionally, the program surveys and assesses selected wetland areas for culturally significant plants, and the program also has conducted a tribal fish consumption survey in the past. Staff members represent the Seneca Nation on water quality issues at the state and national levels, ensuring that tribal perspectives are being represented, partner with tribal and non-tribal organizations on restoration activities, and provide education and outreach. Additional expertise is provided by the Fish and Wildlife Department, which undertook a restoration project in the Allegheny watershed, restoring instream habitat, hydrology and stream connectivity.

D. Technical Capabilities of EPD Staff [40 C.F.R. § 131.8(b)(4)(v)]

The EPD employs experienced staff members who are trained to administer the water quality program. Lisa Maybee has been the Department Director since 2015, and also served in that position previously from 1993-2004. Ms. Maybee graduated from the State University of New York – Fredonia with a Bachelor of Science degree in Environmental Science and has been working in the environmental health and natural resources arena since 1987. She also has worked in the Seneca Nation Health Department, and served in the United States Marine Corps and the Marine Corps Reserve.

Deleen White is the EPD Water Quality Program Manager and has served in that role since February 2014. As Water Quality Program Manager, Ms. White designs water quality initiatives, conducts program activities, hires and coordinates contractors performing water quality work, and assists with corrective actions addressing water quality problems. Previously, Ms. White worked in EPD as an environmental technician supporting the work of the Program Managers, and as assistant to the Treasurer of the Seneca Nation. Ms. White has completed EPA's Water Quality Standards Academy classroom course.

Clifford Redeye, III has served as an Environmental Associate at EPD since 2014. He supports the work of the Program Managers and has experience in water quality, river and roadway spill cleanups, environmental assessments and permitting, and community outreach. He also served as a Project Manager with EPD from 2011-2013, managing fish and wildlife projects and implementing Seneca environmental laws. Mr. Redeye holds a Bachelor of Arts degree from the State University of New York at Buffalo.

Resumes for these EPD staff members are included with this application as Exhibit 5. Their work is supported by Travis Jimmerson, Environmental Technician at EPD.

E. SNI Accounting and Procurement System [CWA § 106]

All SNI grants have been successfully administered, including programmatic and financial reporting. The Nation administers numerous competitive funding grants, as discussed in Section 4(A) above.

Fiscal responsibilities associated with CWA § 106 funding will be managed by the Nation's Fiscal Affairs Department, which provides financial services for all of the Nation's departments. The Fiscal Affairs Department provides services related to accounting, accounts payable, budget management, grants and contracts, financial management, information technology services, fixed asset inventory control, payroll services and procurement, and complies with 2 C.F.R. Parts 180 and 200.

The Fiscal Affairs Department has adopted a modified accrual accounting system where expenses are recorded when the related liability is incurred and revenues are recognized when measurable and available. The Department follows generally accepted accounting principles and uses a computerized double-entry accounting system. The Department also ensures compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and with 2 C.F.R. Part 1500, when applicable. The Fiscal Affairs' system includes methods to monitor grant compliance with: payments to contractors, allowable costs, reporting requirements, grant fund tracking, monitoring leveraged resources, audits, procurement, and grant closeout processes. SNI's financial management system also maintains fiscal control and accounting procedures that track grant funds separately from other funds to ensure accurate accounting of grant expenditures. The Nation is a low risk auditee as determined by its independent auditors in the SNI Tribal Government Programs Single Audit Report for FY 2016 (see Exhibit 6).

The accounting system includes internal controls that monitor grant assets and assure that assets are used solely for authorized purposes. Program directors submit invoices for payment and each invoice must be approved, depending on the dollar amount, by the CEO (President) and/or the CFO (Treasurer), and also by the Department Director, the Comptroller, and the Purchasing Office, who check to ensure allowable costs. The Fiscal Affairs Department maintains inventory records to monitor assets and ensure appropriate use of the assets. Budget controls provide comparisons between actual expenditures and budgeted amounts in monthly revenue and expenditure reports that are provided for program directors to review. The Nation procures products and services through a fair and competitive process as required by the SNI Procurement Policy Statement, which is attached as Exhibit 6.

5. The Nation Has Emergency Authority to Restrain Pollution Causing an Imminent and Substantial Endangerment to Public Health and Welfare [CWA § 106(e)(2)].

Under CWA § 106(e)(2), in order to receive a CWA § 106 grant the Nation must have authority comparable to the EPA Administrator's emergency power under CWA § 504, 33 U.S.C. § 1364, to enjoin discharges to surface waters (or take other necessary action) when those discharges are causing or contributing to pollution presenting an imminent and substantial endangerment to public health or welfare. SNI also must have "adequate contingency plans to implement such authority." *Id.*; *see also* 40 C.F.R. § 35.588(a)(2).

The Nation possesses inherent authority to take such actions to protect the public health and welfare, and has authorized its legal counsel, upon the direction of the Nation's President, to bring suit on behalf of the Nation in any competent court against any person causing or contributing to the alleged discharge, requiring such person to stop such discharge or take such other action as may be necessary, and, in the case of an unauthorized discharge, may also seek appropriate damages to compensate the Nation for any harm caused by the discharge. *See* Council Resolution Authorizing Emergency Action and Contingency Plan to Restrain Pollution of the Nation's Waters (Exhibit 7). In addition, each of the laws listed in Section 4.B controls sources of pollutants that could have an impact on water quality, and several of those laws contain enforcement provisions that provide the injunctive relief described in CWA § 504. *See* Source Water Protection Code § VIII(C); Underground and Above-Ground Storage Tank Act § 302(b) and (d); and Waste Disposal Ordinance § 5(a) and (d) (all included in Exhibit 3).

The Nation's Resolution authorizing these emergency powers also includes a contingency plan for implementing these powers. The Nation requires both polluters and SNI officers and staff to immediately report to the EPD Director upon becoming aware of, witnessing, or receiving reports of any new or suspicious discharge to surface waters. The Director must then investigate whether the discharge poses a threat to public health or welfare, consult with the Nation's legal counsel, and, if appropriate, recommend to the President that immediate action be taken.

The Nation therefore clearly is eligible and capable to manage and administer CWA § 106 grants and to administer CWA §§ 303 and 401 water quality standards and certification programs consistent with the Clean Water Act and applicable regulations.

List of Exhibits

- | | |
|------------------|---|
| Exhibit 1 | Maps of the Seneca Nation Territories and List of Surface Waters |
| Exhibit 2 | Statement of Legal Counsel regarding the Regulatory Authority and Jurisdiction of the Seneca Nation of Indians |
| Exhibit 3 | Seneca Nation of Indians Constitution, Treaties, and Other Relevant Laws |
| Exhibit 4 | Seneca Nation of Indians Organizational Charts |
| Exhibit 5 | EPD Staff Resumes |
| Exhibit 6 | Seneca Nation Single Audit Report for FY 2016 (selected page) and SNI Procurement Policy Statement |
| Exhibit 7 | Council Resolution Authorizing Emergency Action and Contingency Plan to Restrain Pollution of the Nation's Waters |

EXHIBIT 1

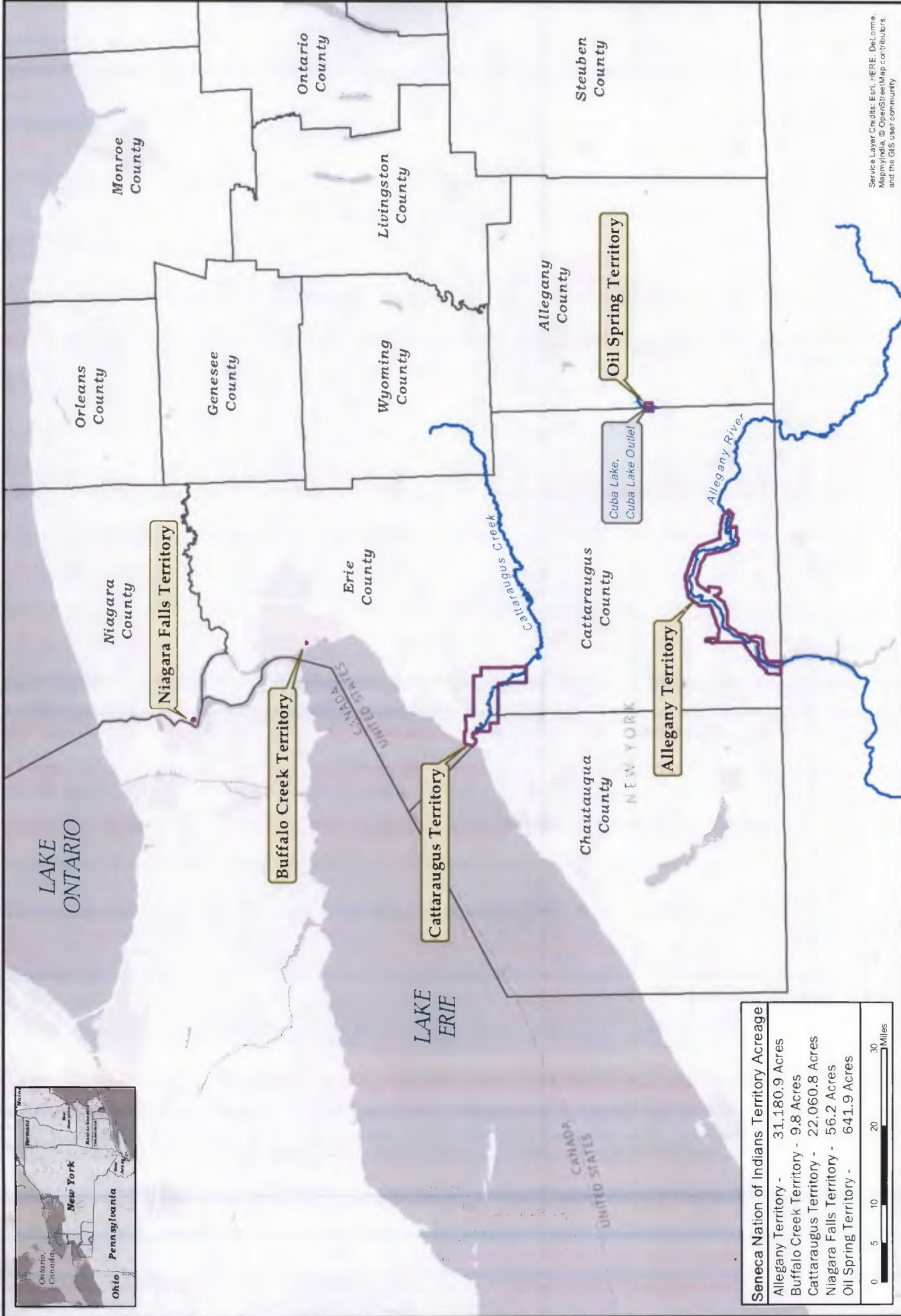
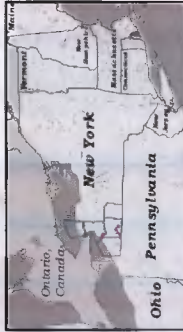
**MAP OF THE SENECA NATION TERRITORIES
AND LIST OF SURFACE WATERS**



Seneca Nation of Indians



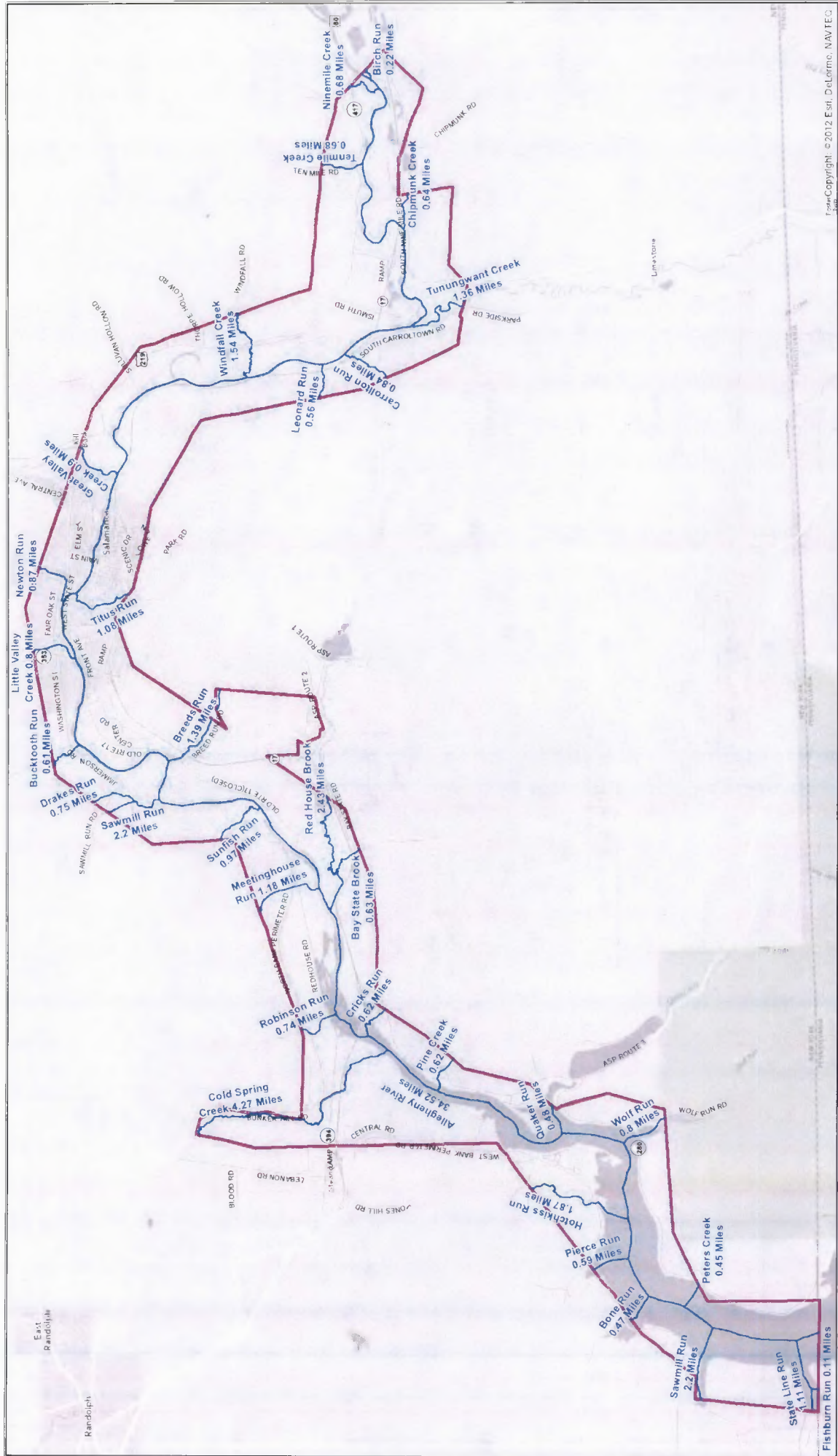
Locational Map of the Territories



Seneca Nation of Indians Territory Acreage	
Allegany Territory -	31,180.9 Acres
Buffalo Creek Territory -	9.8 Acres
Cattaraugus Territory -	22,060.8 Acres
Niagara Falls Territory -	56.2 Acres
Oil Spring Territory -	641.9 Acres



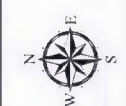
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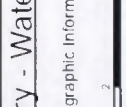
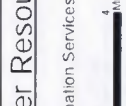


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Allegheny Territory - Water Resources

Seneca Nation Geographic Information Services



NYS National Hydrography Dataset Streams
 SNI Roads Data
 Allegheny Territory

Legend

Allegheny Territory

Allegheny Territory

Allegheny Territory

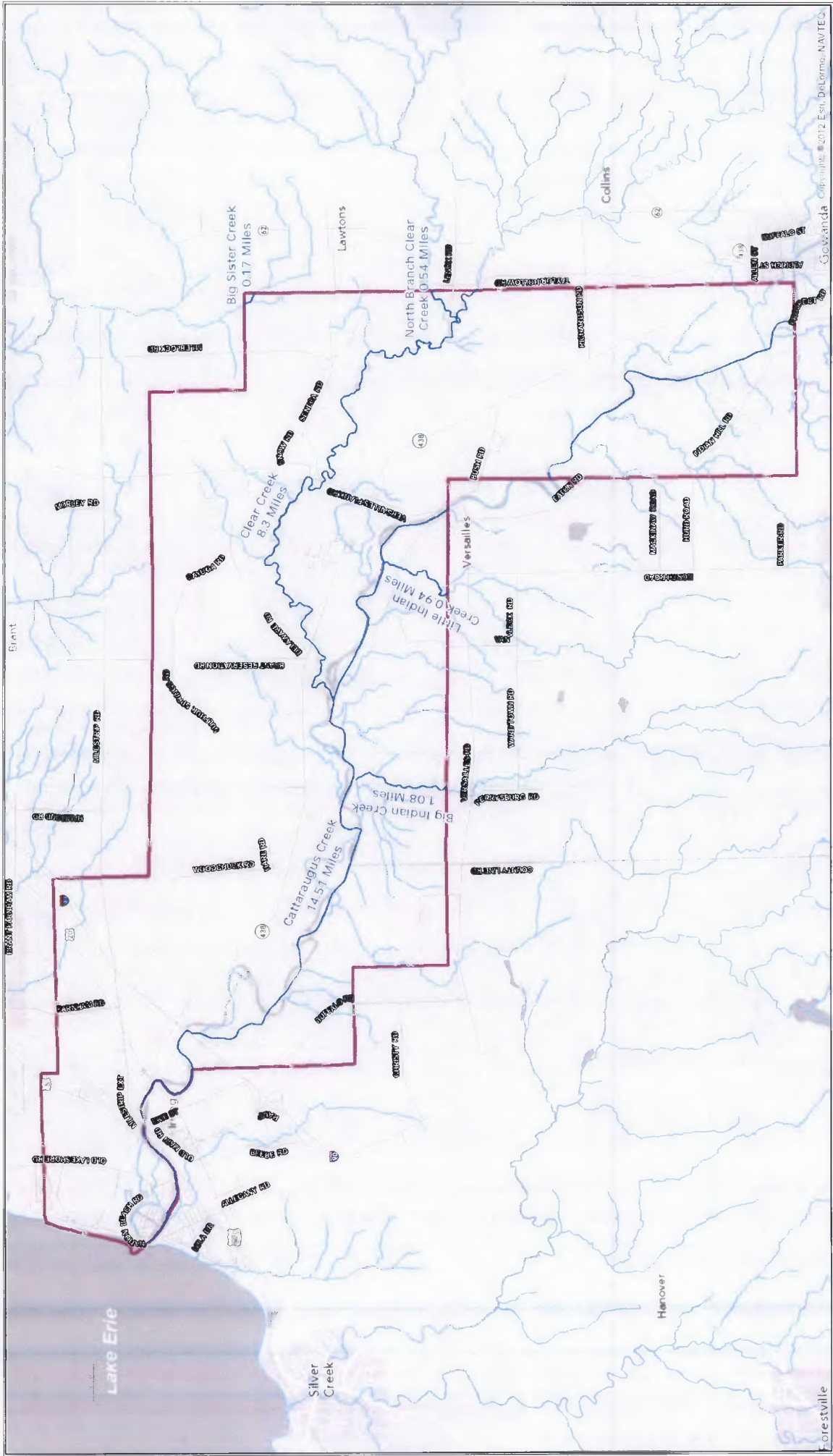
Allegheny Territory

Allegheny Territory

Allegheny Territory

Allegheny Territory

Allegheny Territory



Cattaraugus Territory - Water Resources

Seneca Nation Geographic Information Services



- Legend**
- NYS National Hydrography Dataset Streams
 - SNI Roads Data
 - Cattaraugus Territory



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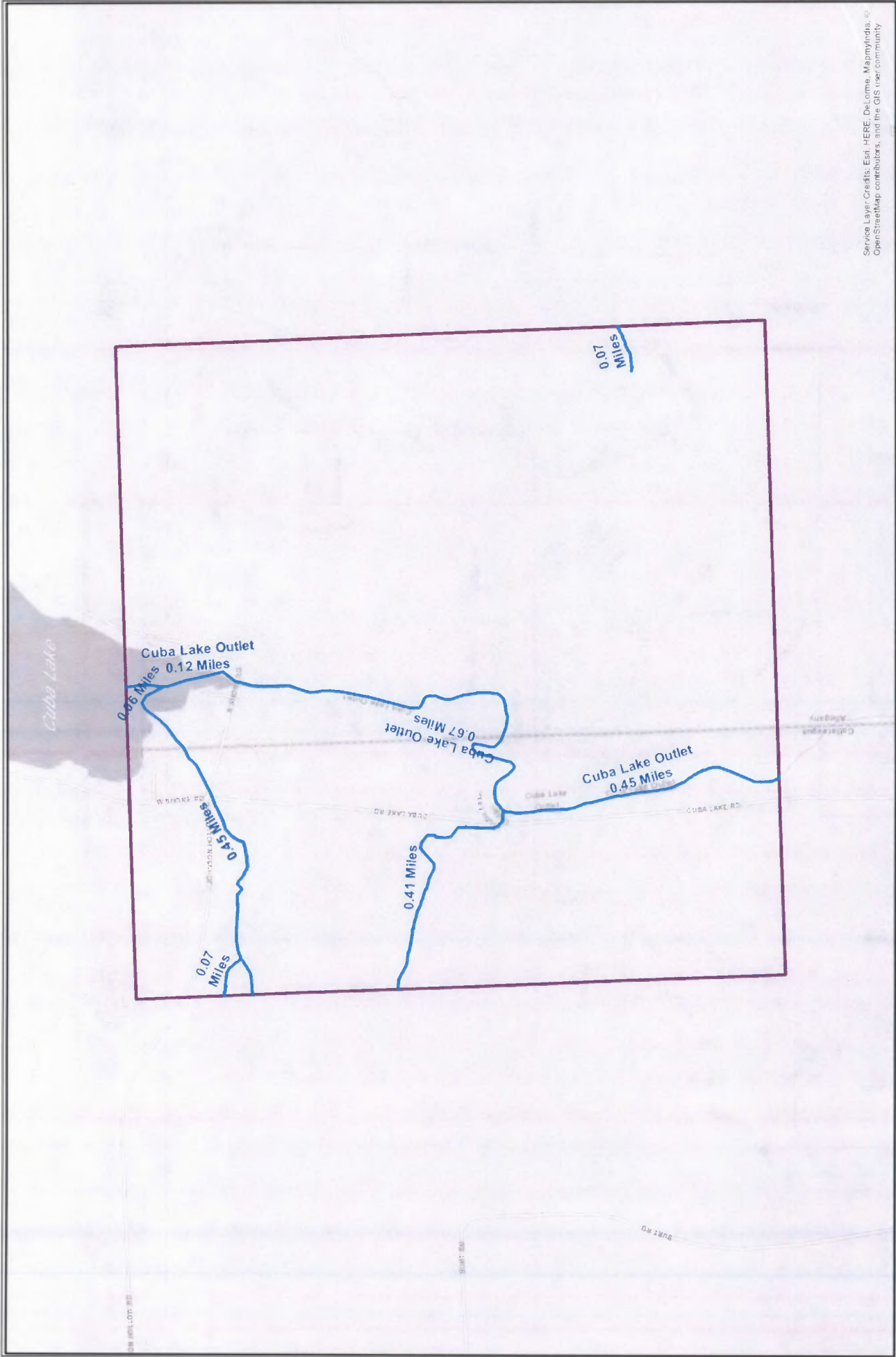
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Seneca Nation Geographic Information Services

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Seneca Nation Geographic Information Services

Seneca Nation Geographic Information Services



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Oil Spring Territory - Water Resources

Seneca Nation Geographic Information Services



- Legend**
- NYS National Hydrography Dataset Streams
 - Oil Spring Territory

List of Surface Waters within Seneca Nation Territories

Allegheny Territory	Cattaraugus Territory	Oil Spring Territory
Allegheny River	Big Indian Creek	Cuba Lake
Allegheny Reservoir	Big Sister Creek	Cuba Lake Outlet
Bay State Brook	Cattaraugus Creek	
Birch Run	Clear Creek	
Bone Run	Little Indian Creek	
Breeds Run	Native Brook Trout Stream	
Bucktooth Run	North Branch Clear Creek	
Carrollton Run	Lake Erie	
Chipmunk Creek		
Cold Spring Creek		
Cricks Run		
Drakes Run		
Fishburn Run		
Great Valley Creek		
Hotchkiss Run		
Hotchkiss Run		
Leonard Run		
Little Valley Creek		
Meetinghouse Run		
Newton Run		
Ninemile Creek		
Peters Creek		
Pierce Run		
Pine Creek		
Quaker Run		
Red House Brook		
Robinson Run		
Sawmill Run		
Sawmill Run		
South Branch State Line Run		
State Line Run		
Sunfish Run		
Tenmile Creek		
Titus Run		
Tunungwant Creek		
Windfall Creek		
Wolf Run		

EXHIBIT 2

**STATEMENT OF LEGAL COUNSEL REGARDING THE
REGULATORY AUTHORITY AND JURISDICTION OF THE
SENECA NATION OF INDIANS**

SENECA NATION OF INDIANS

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LEGAL DEPARTMENT

STATEMENT OF LEGAL COUNSEL FOR THE SENECA NATION OF INDIANS REGARDING REGULATORY AUTHORITY AND JURISDICTION TO ADMINISTER A CWA § 106 GRANT AND CWA §§ 303 AND 401 WATER QUALITY STANDARDS AND CERTIFICATION PROGRAMS

The Seneca Nation of Indians ("Nation" or "SNI") submits this jurisdictional statement as part of its application for recognition of eligibility ("Application") under Section 518(e) of the Clean Water Act ("CWA"), 33 U.S.C. § 1377(e), to receive and administer a grant under CWA § 106, 33 U.S.C. § 1256, and to administer water quality standards and certification programs under CWA §§ 303 and 401, 33 U.S.C. §§ 1313 and 1341. The Nation asserts authority to obtain this grant and administer these programs over all waters within the Seneca Nation Territories.

I. The Seneca Nation Territories are Equivalent to "Reservation" under CWA § 518(e)

The Seneca Nation Territories consist of five areas located in Western New York: the Allegany Territory; the Cattaraugus Territory; the Oil Spring Territory; the Buffalo Creek Territory; and the Niagara Falls Territory. *See* map attached as Application Exhibit 3.

The Allegany Territory consists of 31,180.9 acres and is located along the Allegany River in Cattaraugus County, New York, around 70 miles south of Buffalo. Approximately 10,000 acres were taken by the United States on permanent easement for the Kinzua Dam and Reservoir and were inundated following construction of those facilities. The Cattaraugus Territory consists of 22,060.8 acres and is located along Cattaraugus Creek in Cattaraugus, Chautauqua and Erie Counties, New York. The Oil Spring Territory consists of 641.9 acres near Cuba, New York on the border of Cattaraugus and Allegany Counties.

The Buffalo Creek Territory is located in Buffalo City in Erie County, New York and is just under 10 acres. The Niagara Falls Territory is located in Niagara Falls City in Niagara County, New York and is approximately 56.2 acres. Both areas were acquired in connection with the New York State Gaming Compact.

These five Territories constitute the Nation's "reservation" for purposes of CWA § 518(e), as discussed below.¹

¹ The Buffalo Creek and Niagara Falls Territories do not contain any surface waters, and therefore the Seneca Nation Environmental Protection Department would not be administering CWA water quality standards or certification programs in those Territories.

A. The Meaning of “Reservation” under CWA § 518(e)

CWA § 518(e)(2) provides that an Indian tribe is eligible to administer various CWA programs if:

the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

An “Indian reservation” is defined under the Clean Water Act as “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.” CWA § 518(h); *see also* 40 C.F.R. §§ 35.582, 131.3(k).

In its rulemaking establishing requirements for tribal eligibility applications under CWA §§ 303 and 401, EPA interpreted the language of Section 518(e)(2) to mean that tribes are limited to obtaining approval for “lands within the boundaries of the reservation.” 56 Fed. Reg. 64876, 64881 (Dec. 12, 1991). EPA stated, however, that “the meaning of the term ‘reservation’ must, of course, be determined in light of statutory law and with reference to relevant case law” and that “it is the status and use of the land that determines if it is to be considered ‘within a reservation’ rather than the label attached to it.” *Id.* Thus, land may be considered part of a reservation even if it is tribal trust land outside the formal reservation boundaries. *See, e.g., Oklahoma Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993); *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991); *United States v. John*, 437 U.S. 634, 648 (1978); 56 Fed. Reg. at 64,881 (“EPA considers trust lands formally set apart for the use of Indians to be ‘within a reservation’ for purposes of section 518(e)(2), even if they have not been formally designated as ‘reservations.’”).

Moreover, land may be considered “reservation” even if a tribe holds title to the land rather than the United States holding title in trust for the tribe. *See, e.g., United States v. Chavez*, 290 U.S. 357 (1933); *United States v. Candelaria*, 271 U.S. 432 (1926); *United States v. Sandoval*, 231 U.S. 28, 48 (1913) (all holding that Pueblo lands, which consist at least in part of tribal fee lands, are equivalent to “reservation” land). As a result, EPA has approved numerous Pueblo CWA eligibility applications, finding that Pueblo fee land “is functionally equivalent to a reservation” for purposes of the CWA; “the type and extent of jurisdiction a Tribe exercises over a pueblo is equivalent to that it would exercise over a reservation [citing *Chavez* and *Sandoval*];” and “the fact that the Tribe holds title to the pueblo in fee, rather than having title held in trust for the Tribe by the United States is not an obstacle to reservation status [citing *Indian Country, U.S.A. v. Oklahoma Tax Commission*, 829 F.2d 967, 975 (10th Cir. 1987)].”² In *Indian Country, U.S.A.*, the court held

² Memorandum regarding Application of the Pojoaque Pueblo for Treatment as a State under Section 106 of the Clean Water Act (September 26, 1989), from Gerald H. Yamada, Acting General Counsel, to Rebecca Hammer, Acting Assistant Administrator for Water, at 3; Memorandum regarding Application of the Pueblo of Isleta for Treatment as a State under Section 106 of the Clean Water Act (May 3, 1990), from George R. Alexander, Jr., Regional Counsel, to Myron Knudson, Director, Water Management Division, at 3. *See also* EPA Approval of Pueblo of Taos Application for Treatment in the Same Manner as a State Under § 518 of the Clean Water Act (CWA) for Purposes of Administering CWA § 303(c) and § 401 (Decision Document, December 2005), at 8 (Pueblo of Taos’ fee lands “meet the test for being ‘within a reservation’”),

that “[p]atented fee title is likewise not an obstacle to either reservation or Indian country status of [tribal] lands,” 829 F.2d at 975. *See also Williams v. U.S.*, 215 F.2d 1, 3 (9th Cir. 1954) (issuance of patent in fee simple did not remove land from reservation); *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996) (upholding EPA’s approval of water quality standards for Pueblo of Isleta, which includes tribal fee land).

Here, where the Nation holds recognized title in restricted fee status in the Allegany, Cattaraugus, and Oil Spring Territories (as explained in more detail below), the Territories are equivalent to reservation land within the meaning of the Clean Water Act. *See Indian Country, U.S.A.*, 829 F.2d at 976 (tribally owned treaty lands “historically were considered Indian country and still retain their reservation status within the meaning of 18 U.S.C. § 1151(a)”). *See also In re New York Indians*, 72 U.S. 761, 763 (1866) (discussing Allegany and Cattaraugus “reservations”); *Seneca Nation of Indians v. Christy*, 162 U.S. 283 (1896) (discussing “Cattaraugus Indian reservation”); *Seneca Nation of Indians v. Appleby*, 196 N.Y. 318, 319 (1909) (referring to “lands commonly known as the Allegany and Cattaraugus reservations”); *Seneca Nation of Indians v. New York*, 206 F. Supp. 2d 448, 525 (W.D.N.Y. 2002), *aff’d*, 382 F.3d 245 (2d Cir. 2004) (discussing history of “Allegany and Cattaraugus reservations”); *Seneca Nation of Indians v. United States*, 12 Ind. Cl. Comm. 552, 556-57 (1963) (discussing the “Oil Spring Reservation”); Constitution of the Seneca Nation of Indians of 1848, as amended (Application, Exhibit 1) (referring to Allegany, Cattaraugus and Oil Spring “Reservations”).

The Buffalo Creek and Niagara Falls Territories were acquired with funding appropriated under a settlement act which specifically provided that lands acquired using such funding “shall be held in restricted fee status by the Seneca Nation,” Seneca Nation Settlement Act of 1990 (“SNSA”), 25 U.S.C. § 1774f(c). Therefore, they also are equivalent to “reservation” land under the Clean Water Act.³

B. The Restricted Fee Status of the Allegany, Cattaraugus, and Oil Spring Territories

SNI is the westernmost of the six Tribal Nations that comprise the Iroquois Confederacy or Six Nations, a democratic government predating the formation of the United States and located in what is now the Northeastern United States and Southeastern Canada. *Seneca Nation of Indians v. New York*, 206 F. Supp. 2d at 458. In 1794, the United States described and recognized a tract of land in Western New York as “the property of the Seneca nation” and acknowledged the Nation’s “free use and enjoyment thereof.” Treaty with the Six Nations (“Treaty of Canandaigua”), 7 Stat. 44 (Nov. 11, 1794); *Seneca Nation of Indians*, 206 F. Supp. 2d at 486-87. That land eventually became divided into the Allegany, Cattaraugus, and Oil Springs Territories. *See, e.g., United States v. City of Salamanca*, 27 F. Supp. 541, 544 (W.D.N.Y. 1939); *Citizens Against Casino Gambling in Erie Cty. v. Hogen (“CACGEC”)*, 2008 WL 2746566 (W.D.N.Y. July 8, 2008), at *7. The Treaty with the Senecas, 7 Stat. 586 (May 20, 1842), confirmed that SNI retained the “right and title” in the Allegany, Cattaraugus, and Oil Spring Territories that had been recognized in the 1794 Treaty of Canandaigua. *CACGEC* at *7 & n. 15, *8. Legal title to these

https://www.epa.gov/sites/production/files/2015-07/documents/pueblo_of_taos_approval_and_map.pdf; EPA Indian Tribal Approvals for the Water Quality Standards Program (listing eligibility approval dates for twelve Pueblos), available at <http://water.epa.gov/scitech/swguidance/standards/wqslibrary/approvable.cfm>.

³ Although the Territories also may be considered as dependent Indian communities under 18 U.S.C. § 1151(c), the same is true for Pueblo fee lands, which EPA views as equivalent to “reservations” for purpose of eligibility under CWA § 518(e), as discussed above.

territories “has never been in the United States.” *Seneca Nation of Indians*, 12 Ind. Cl. Comm. at 561.⁴

SNI thus has recognized title in the Allegany, Cattaraugus and Oil Spring Territories. Recognized title “is the equivalent of fee simple ownership,” *Seneca Nation of Indians v. New York*, 382 F.3d 245, 258 n. 15 (2d Cir. 2004). Further, the Nation holds these Territories in “restricted fee” status, *see Huron Grp., Inc. v. Pataki*, 785 N.Y.S.2d 827, 832 (Sup. Ct., Erie County 2004), meaning “that the lands cannot be sold or alienated by the Tribe or Nation for a certain period without approval by the United States,” *id.* at 832 n. 1, as a result of the Nonintercourse Act, Act of July 22, 1790, ch. 33, 1 Stat. 138 (codified at 25 U.S.C. § 177). *See Candelaria*, 271 U.S. at 442 (Nonintercourse Act imposes “a restriction on the alienation of [Indian] lands”). This restriction on alienation makes the Allegany, Cattaraugus and Oil Spring Territories part of the Nation’s “reservation” under CWA § 518(e)(2), just as trust land under federal jurisdiction is considered “reservation” land for purposes of CWA § 518.

C. The Restricted Fee Status of the Buffalo Creek and Niagara Falls Territories

As noted above, the Nation also holds the Buffalo Creek and Niagara Falls Territories in restricted fee status. The Nation acquired these two land areas with funding appropriated under the SNSA, 25 U.S.C. §§ 1774-1774h. The SNSA provides, in relevant part:

Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this subchapter Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be subject to the provisions of that Act [the Nonintercourse Act] and shall be held in restricted fee status by the Seneca Nation.

25 U.S.C. § 1774f(c).

Two years before passing the SNSA, Congress enacted the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721. IGRA requires that all gaming activities take place on “Indian lands” within a tribe’s jurisdiction, *see* 25 U.S.C. § 2710(a)(1), (b)(1), (d)(1)(A)(i), (d)(2)(A). IGRA defines “Indian lands” as “(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.”

Under the 2002 “Nation-State Gaming Compact Between the Seneca Nation of Indians and the State of New York,” which was entered into by those entities pursuant to IGRA, 25 U.S.C. §

⁴ The land base of the Cattaraugus Territory has remained undisturbed since the time of the 1842 Treaty. However, the Allegany land base remained intact only until 1963, when the United States, by condemnation, acquired flowage rights and easements on approximately 10,000 acres of that territory as part of the Allegheny River Reservoir (Kinzua Dam) project. *United States v. 1132.5 Acres of Land*, 441 F.2d 356, 357 (2d Cir. 1971); *CACGEC* at *8.

The Nation’s ownership of a portion of the Oil Spring Territory was challenged in the past but the case was resolved in SNI’s favor. *See Seneca Nation of Indians v. New York*, 26 F. Supp. 2d 555 (W.D.N.Y. 1998), *aff’d*, 178 F.3d 95 (2d Cir. 1999); Consent Decree and Final Judgment, Case No. 85-CV-411C (June 23, 2005) (confirming SNI’s ownership of and title to the property at issue). An additional 54 acres was added to the Oil Spring Territory in November 2016.

2710(d)(1)(C), SNI is authorized to establish gaming facilities: (1) at a specified site in Niagara Falls City, (2) at an unspecified site in Buffalo City, and (3) “on current Nation reservation territory.”⁵ The Nation purchased the Niagara Falls Territory in 2002, using SNSA funds, and holds the site in restricted fee status pursuant to the SNSA. *See Citizens Against Casino Gambling in Erie Cnty. v. Kempthorne*, 471 F. Supp. 2d 295, 309, 325 n. 23 (W.D.N.Y. 2007), *amended on reconsideration in part*, 2007 WL 1200473 (W.D.N.Y. Apr. 20, 2007). In 2005, the Nation used SNSA funds to purchase the Buffalo Creek Territory, which also “assumed restricted fee status by operation of law” pursuant to 25 U.S.C. § 1174f(c). *CACGEC* at *16. As discussed above, Seneca lands held in restricted fee status are “reservation” lands for purposes of CWA § 518(e).

II. Basis for SNI Assertion of CWA Authority over the Seneca Nation Territories

A. Express Congressional Delegation of Authority

The basis for the Nation’s assertion of authority under this Application is CWA § 518(e), which contains an express congressional delegation of authority to eligible Indian Tribes to administer CWA programs for all water resources within their reservations. This delegation is discussed in EPA’s *Revised Interpretation of Clean Water Act Tribal Provision*, 81 Fed. Reg. 30183 (May 16, 2016) (“Reinterpretation”), and it extends to both formal and informal reservations, *id.* at 30192, and to nonmember activities within reservations, *id.* at 30190. As discussed above, the Seneca Nation Territories are equivalent to “reservation” under CWA § 518(e). Moreover, because the Nation’s CWA regulatory authority derives from a congressional delegation, no analysis of the Nation’s authority to regulate non-Indian activities is required. *Reinterpretation* at 30183, 30190; *Ariz. Public Serv. Co. v. EPA*, 211 F.3d 1280, 1287-92, *cert. denied sub nom. Michigan v. EPA*, 532 U.S. 970 (2001).

B. The Nation’s Inherent Authority

The Nation’s assertion of authority under this Application is also based on the Nation’s inherent regulatory authority over its Territories. In order to protect the political integrity, economic security, and health and welfare of its members and other residents on the Seneca Nation Territories, *see Montana v. United States*, 450 U.S. 544, 565-66 (1981), and in furtherance of its continued desire for its “national preservation, growth and prosperity,” as expressed in the introduction to the Constitution of the Seneca Nation of Indians of 1848, as amended (Application, Exhibit 1), the Nation is exercising its inherent authority to protect and preserve the quality of SNI waters by having its Environmental Protection Department (“EPD”) develop various Clean Water Act programs, including the water quality standards and certification programs directly at issue. The Nation may exercise this inherent authority over non-Indians on its Territories as well as over Indians, pursuant to *Montana*.

Some of the activities that the Nation may seek to regulate under its CWA water quality standards and certification programs may be conducted by non-Indians.⁶ Under *Montana*, when a tribe seeks to regulate, under its inherent authority, the activities of non-Indians on non-Indian fee land within its reservation, the tribe must demonstrate either that the non-Indians have entered into “consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements” (prong 1 of *Montana*), or that the conduct the tribe seeks to regulate

⁵ The compact was approved by the Department of Interior in 2002 pursuant to 25 U.S.C. § 2710(d)(8)(C). *See* DOI, Notice of Nation-State Gaming Compact Taking Effect, 67 Fed. Reg. 72968 (Dec. 9, 2002).

⁶ The CWA § 106 grant is not a regulatory program and so it does not implicate *Montana*.

“threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe” (prong 2 of *Montana*). *Montana v. United States*, 450 U.S. at 565-66.

As indicated above, the actual holding of *Montana* was limited to non-Indian activities located on non-Indian fee lands within a reservation, and there are no such lands within the Seneca Nation Territories (see Section I.C, above). See, e.g., *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-45 (1982) (recognizing inherent tribal authority to exclude non-Indians from tribal land, without applying *Montana*); *Montana*, 544 U.S. at 557 (recognizing tribe’s inherent authority to exclude and so to regulate non-Indians on tribal land as different from tribal authority over non-Indians on non-tribal land); *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802 (9th Cir. 2011) (same).

Moreover, subsequent Supreme Court cases indicating otherwise are inapposite, for two reasons: their holdings are limited to narrow situations that do not apply here, as in *Nevada v. Hicks*, 533 U.S. 353, 358 n.2 (2001) (“Our holding in this case is limited to the question of tribal-court jurisdiction over state officers enforcing state law”), accord *Wisconsin v. EPA*, 266 F.3d 741, 748 (7th Cir. 2001); and their discussions of an expansion of *Montana* to tribal lands were expressed in *dicta* only, e.g. *Hicks*, *id.* at 386 (Ginsburg, J., concurring).⁷ Nevertheless, to cover all possibilities, the Nation demonstrates below that the non-Indian activities it may regulate under the CWA would meet the “*Montana* test,” regardless of the status of the land on which those non-Indian activities or facilities may be located, and so the Nation satisfies even an expansive reading of *Montana*.

1. *Regulation of non-Indian activities impacting water quality meets the first prong of the Montana test*

Many of the non-Indian activities taking place on the Seneca Nation Territories and impacting water quality involve farming and related agricultural activities, such as pesticide and herbicide application. There is also some sand and gravel mining by non-Indians on SNI land that may affect the Nation’s waters. In addition, some non-Indians own gas stations on the Nation and therefore own or operate petroleum storage tanks which, if leaks occur, could impact water quality. All of these activities occur pursuant to leases or other commercial agreements with SNI members, because only SNI members may own land within the Seneca Nation Territories. These agreements constitute precisely the type of commercial consensual relationship that is subject to the inherent authority retained by tribes over non-Indians, as specifically stated in the first prong of the *Montana* test. 450 U.S. at 565. See, e.g., *Merrion* (affirming tribal authority to tax oil and gas production by non-Indian lessees on tribal trust land); *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 653 (2001) (discussing *Merrion*).

Moreover, SNI requires permits for any pesticide or herbicide application, sand or gravel mining, or installation or operation of underground or above-ground storage tanks containing petroleum or other hazardous substances. See Application, Exhibits 3.5, 3.6, and 3.8. Any non-

⁷ Similarly, in *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 328 (2008), although the Court implied that a tribe must satisfy the *Montana* test to regulate non-Indians on tribal land, the issue was not actually before the Court. First, the land at issue in the case was non-Indian fee land within a reservation, as in *Montana*. Second, the Court found that sale of non-Indian fee land was not a nonmember “activity,” see, e.g., *id.* at 330, 332, and so could not be regulated by the tribe under *Montana* in any event, *id.* at 332-35. The Court’s statements as to the type of conduct that meets the second *Montana* exception also are *dicta*, since the Court found that the bank’s sale of non-Indian fee land was not “conduct” under that exception. See, e.g., 554 U.S. at 329, 333-36 (the latter referring to “the distinction between sale of the land and conduct on it”).

Indian obtaining such a permit is entering into a consensual relationship with the Nation, in addition to the consensual relationship already created by the lease.

The other non-Indian activities with the potential to affect the Nation's water quality occur in the City of Salamanca, "which is an integral part of the Seneca Nation's Allegany Reservation," SNSA, 25 U.S.C. § 1774d(b)(2), and contains non-Indian residences and businesses that may affect water quality. In addition, the city operates a wastewater treatment facility that discharges into the Allegany River within the Allegany Territory. As provided by the SNSA and discussed above, all non-Indians residing or having businesses in Salamanca are required to have leases, and therefore any non-Indian activities must be conducted pursuant to those leases, thereby becoming subject to the Nation's jurisdiction under the first prong of *Montana*.⁸

Non-Indians also fish in SNI waters. These activities are already regulated by the Seneca Nation Fish & Wildlife Department and are more likely to be benefited by SNI water quality standards than to cause impacts on water quality. In any event, non-Indians must obtain fishing and hunting licenses from the Seneca Nation Fish & Wildlife Department, thus entering into a consensual relationship meeting the first prong of *Montana*.

Further, the CWA programs that the Seneca Nation EPD seeks to implement and the matters that EPD seeks to regulate have a nexus to the consensual relationship itself. *See Atkinson*, 532 U.S. at 656. The Nation will be directly regulating facilities and activities that are constructed and operated or undertaken subject to the leases and licenses that form the basis of the commercial consensual relationships at issue.

2. *Regulation of non-Indian activities impacting water quality meets the second prong of the Montana test*

In addition, by its very nature, regulation of water quality would protect the health, welfare, political integrity and economic security of the Seneca Nation, and therefore all the activities that SNI may seek to regulate under the CWA programs at issue here would meet the second prong of *Montana*.

In its Reinterpretation, EPA explained that tribes applying for eligibility for CWA programs would most likely meet the second prong of *Montana* based upon EPA's generalized findings regarding the relationship between water quality and tribal health and welfare. 81 Fed. Reg. at 30189. EPA anticipated that a tribe's factual demonstration would be a relatively simple showing under established Indian law principles, "given the importance of surface water to tribes and their members, the serious nature of water pollution impacts, and the mobility of pollutants in water." *Id.* at 30189, 30194.

Moreover, EPA's tribal eligibility rule under Sections 303 and 401 of the Clean Water Act, 56 Fed. Reg. 64,876, 64,878 (Dec. 12, 1991), acknowledged that "the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare," and indicated that the Clean Water Act itself constitutes a legislative determination that activities affecting water quality have serious and substantial impacts. *Id.* at 64,878. As EPA noted,

the primary objective of the [Clean Water Act] "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" [Section 101(a)]

⁸ A sample lease agreement between SNI and a lessee within the City of Salamanca is included with this jurisdictional statement as Attachment 1.

and, to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants into the navigable waters of the U.S. and attaining a level of water quality which is fishable and swimmable [Section 101(a)(1)-(2)]. Thus the statute itself constitutes, in effect, a legislative determination that activities which affect surface water and critical habitat quality may have serious and substantial impacts.

Id. Further, EPA noted that “clean water, including critical habitat..., is absolutely crucial to the survival of many Indian reservations,” and that “because of the mobile nature of pollutants in surface waters...it would be practically very difficult to separate out the effects of water quality impairment on non-Indian fee land within a reservation with those on tribal portions.” *Id.*

Clean water and critical habitat are indeed crucial to the Nation. To begin with, the Seneca world view is a holistic one in which the air, water, people, and wildlife are all related to one another. SNI waters are used by the Nation and its members for drinking, crop irrigation, livestock watering, hunting and fishing, and traditional and ceremonial uses. Clean water also is crucial to wildlife, including birds, and is a critical factor in providing habitat for wildlife and native plants, many of which are culturally significant to the Nation. The Nation has relied on its water resources for physical, cultural, and spiritual survival long before the arrival of Europeans, and preservation and protection of those resources is essential to the way of life, welfare, and prosperity of the Nation to this day. Any impairment of the Nation’s waters would therefore have a serious and substantial impact on the health, welfare, political integrity and economic security of the Nation and its members.

Degradation of water quality could have additional adverse economic impacts for the Nation. SNI members not only use the Nation’s surface waters themselves for irrigation but also derive revenue by leasing agricultural lands to non-Indians who in turn rely on those waters for irrigation. The Seneca Nation Fish & Wildlife Department issues licenses for hunting and fishing, which not only assist in the maintenance and protection of wildlife resources but also are a source of revenue. For example, Cattaraugus Creek is known for its population of steelhead trout and walleye, which attracts many non-Indian fishermen to SNI waters.

Further, as noted above, the surface waters themselves are important to the Seneca Nation. Tribal ceremonial practitioners are aware of the exact locations of natural springs and other water sources that are used in religious and ceremonial observances. Senecas believe that “water is life because it quenches our thirst and makes us strong.” Maintaining the quality of those waters also is vital to the protection of the wildlife, plants, and fisheries that are a part of SNI culture, and so could have an impact on traditional uses of these resources. Seneca Nation’s traditional ceremonies and practices use feathers from specific birds, and the wildlife is used for consumption, along with many other significant uses. Traditionally, every part of the wildlife is used so there is no waste. In the Seneca language there is no word for “garbage.” Seneca Nation traditions also include fashioning implements from the bones of certain animals, baskets from specific trees, leather from specific animals, and most importantly numerous plants are used for traditional medicines, food, and ceremonies. Any adverse impacts on water quality, and indirect adverse impacts on plants and wildlife, would therefore impact the welfare of the Seneca Nation members and the political integrity of the Seneca Nation government, which is committed to protecting cultural and traditional religious practices.

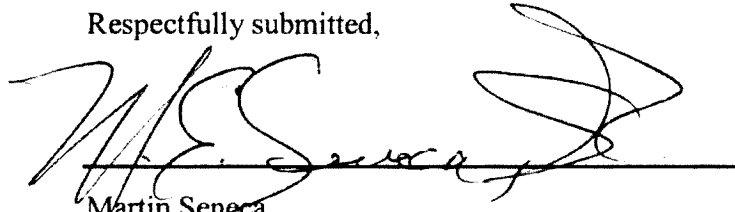
In sum, the Nation must be able to regulate water quality throughout the Seneca Nation Territories in order to exercise self-governance; protect its members and others within the

Territories by providing the clean water necessary to their health, safety, and welfare; and derive economic benefits.

III. Conclusion

Based on the foregoing discussion, it is the opinion of legal counsel to the Seneca Nation of Indians that there are no limitations or impediments to the Nation's authority or ability to accept and effectuate the express congressional delegation of authority contained in CWA § 518(e), as described in EPA's Reinterpretation and in this jurisdictional statement. In addition, SNI has inherent authority to administer the CWA § 106 grant and CWA §§ 303 and 401 water quality standards and certification programs for all surface waters within the Seneca Nation Reservation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Seneca', written over a solid horizontal line. The signature is stylized and cursive.

Martin Seneca
General Counsel, Seneca Nation

ATTACHMENT 1
SAMPLE LEASE AGREEMENT

LEASE NO.: CS-

ACCOUNT NO.:

FORMER LEASE NO(s).

PROPERTY LOCATION:

ORIGINAL

Salamanca, New York 14779

THIS LEASE, made and entered into between the Seneca Nation of Indians, a sovereign nation, party of the first part, hereinafter designated as the Lessor, and _____, party of the second part, hereinafter designated as the Lessee(s);

WITNESSETH:

1. **DESCRIPTION OF PROPERTY**. For and in consideration of the payment of rental hereinafter specified and the performance and fulfillment of the terms and conditions herein by the Lessee(s), Lessor hereby leases to the Lessee (s) the property situate on the Allegany Reservation as particularly described below ["lease premises" or "leased property"], excepting therefrom all timber, and all oil, gas and other minerals, including sand and gravel. The execution of this Lease, the surrender of the former Lease(s) pursuant to attachment "A" hereof, and the exercise of the option to renew this Lease, all as provided for under Section 1, 2, and 3 of this Lease, shall be subject to the full reservation of all legal rights by both parties contained in Section 28 infra. The Lease premises are described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate on the Allegany Territory of the Seneca Nation of Indians in the City of Salamanca, County of Cattaraugus and State of New York, bounded and described as follows:

[ADDITIONAL PAGE, IF NECESSARY, FOR PROPERTY DESCRIPTION ONLY]

The description of the Lease premises provided above is based upon the best efforts of Lessor and Lessee(s) to Lease the lands covered by the former Lease No(s). _____, and it is the intent of the parties to lease those lands and only those lands. To effectuate that intent, Lessor and Lessee(s) agree that: [1] the above description is subject to modification [i] for mutual mistake of fact by written agreement executed by Lessor and Lessee(s); [ii] to reflect alterations provided for in Section II, or [iii] pursuant to a survey agreed upon in writing by both parties and by the City of Salamanca, such survey to be performed by persons expert in the field of surveying; and, [2] Lessor shall not be liable in any way whatsoever to Lessee(s) in the event that another Lessee shall claim an interest in all or any portion of the Lease premises.

2. **TERM.** The initial term of this Lease shall be for forty [40] years, commencing on the 20th day of February, 1991, and ending on the 19th day of February 2031, provided that Lessee(s) understands and agrees that this Lease shall not be binding on the Nation until the steps set forth in Section IV.D. of the Agreement between the Seneca Nation of Indians and City of Salamanca, executed by the City on July 12, 1990, and by the Nation on July 13, 1990, ["Agreement"] have been accomplished, and shall remain effective subject to the terms of such Section, and provided further that ineffectiveness of this Lease pursuant to such section, should that occur, shall not be an event of default under Section 22 infra.

3. **OPTION TO RENEW.** [a] Lessor grants to Lessee(s), subject to the conditions set forth below, the right and option to renew this Lease for one period of forty [40] years, beginning on the 20th day of February, 2031, and expiring on the 19th day of February, 2071, at a rental determined as provided below, and otherwise subject to and on all of the terms and conditions herein. This option must be exercised by the giving to Lessor, between February 20 and November 21, 2030, a written notice of the exercise thereof by Lessee(s), but Lessee(s) shall in no event be entitled to renew the term hereof if Lessee(s) is in default in the performance of any obligations hereunder as of the date of the expiration of the initial term hereof. Lessor shall give Lessee(s) and the City written notice of all defaults on or before November 20, 2030, and either Lessee(s) or the City may cure the defaults on or before February 19, 2031, and thereby preserve the right to renew, provided however, that if on February 19, 2031, Lessee has given Lessor notice that a default exists which could not be cured by the date of the expiration of the initial term, but which Lessee has made every good faith effort to cure before that date. Lessor and Lessee shall mutually agree on an extension of not more than 180 days to complete Lessee's cure of the default.

[b] Upon written request of Lessee, the City, or the mortgagee at any time between February 20th and November 21, 2030, Lessor shall within seven [7] days of receiving the request advise Lessee in writing of any default by Lessee known to Lessor at that time which has not been cured, or of any investigation at that time by Lessor of any possible default by Lessee.

4. **RENT.**

4.1 **Basic Rent**

[a] In consideration of the leasing of the above-described premises, Lessee covenants and agrees to make an advance annual rental payment on or before February 20th of each year that this Lease or any renewal thereof pursuant to Section 3 of this Lease is in effect. The annual rental payment for the lease premises shall be eight percent [8%] of the land value of property leased for the residential purposes and ten percent [10%] of the land value of property

leased for non-residential purposes. "Residential" means one, two, three, and four family residence, except cooperatives and condominiums. "Non-residential" means the value of the land, exclusive of improvements, provided that the use of the term "land value" shall not in any way affect the Nation's claim that it owns improvements on leased lands, which claim is preserved under Section 28 infra. The land value of the leased property shall be as determined by the procedures provided for under Section 4.1[b] and [c], provided that until the reappraisal to be completed by the end of the fifth year of the initial forty-year term of this Lease has been completed as provided for under Section 4.1[b], the land value for the leased property shall be determined by the Equalization Rate applied to the assessed land value for each parcel.

[b] Lessee's annual rental payment shall be adjusted annually by the same percentage at which the full value of property in the City changes, as shown by the Equalization Rate. If the Equalization Rate [or a successor or substitute index similarly adjusted], is not available, Lessee agrees that the Lessor and the City of Salamanca will agree upon the use of a different methodology for determining the rate of change in property values in the City which shall thereafter be used to make the annual adjustment in Lessee's annual rental payment. Lessor and Lessee further agree that the property in the City will be the subject of an objective reappraisal to determine the land value of the leased property, to be completed by the end of the fifth year of the initial forty year term of this Lease. The reappraisal of the land value of the leased property shall be conducted by an appraiser retained specifically for this purpose, who is acceptable to both the Lessor and the City of Salamanca, shall be conducted on terms acceptable to both the Lessor and the City, and shall be without cost to the Lessee. The land value as determined by the objective reappraisal conducted under this Section shall become the land value of the purpose of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to this subsection.

[c] Lessee further understands and agrees that Lessor may, at its option at any other five year anniversary date of this Lease [the first such date being February 20, 2001], [1] initiate, upon satisfactory demonstration to the Seneca Nation – City of Salamanca Joint Leasing Commission ["Joint Leasing Commission"], that the values used are not representative of market values, and objective reappraisal to determine the land value of the leased property, to be conducted in accordance with subsection [b] above, or [2] test the methodology used to determine the Equalization Rate through the use of a random sample selection of parcels in accordance with the procedures set forth by the State Board of Equalization and Assessment for such territory. The land value as determined by objective reappraisals conducted under this subsection shall become the land values for purposes of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to Subsection [b] of this Section. The Equalization Rate as determined by the testing procedures set forth under this subsection shall become the Equalization Rate used for that year for purposes of determining an annual adjustment in the Lessee's annual rental payment as provided for under this Section.

4.2 City of Salamanca Payment of Rent. Lessee understands that the City of Salamanca has agreed to make full payment of all amounts described in Section 4.1 to Lessor. Nothing in this Section shall relieve Lessee of the obligation to make the rental payments to Lessor required in Section 4.1 as adjusted from time-to-time if the City shall not honor its agreement to make such full payment.

4.3 Late Payments.

[a] Lessee also shall pay, from time-to-time, as provided in this Lease or on demand of Lessor, as "additional rent": [1] interest at the rate of two [2%] percent per month

on all overdue installments of basic rent, such interest to accrue from the due date thereof until payment; [2] a late charge of ten [10%] of the annual rent payment for each past due payment to cover the extra expense involved in handling such delinquency; [3] reasonable attorneys' fees and expenses occasioned by ant default by Lessee under this Lease.

[b] If the City of Salamanca discharges its obligations to tender full payment to Lessor for Lessee's share of the annual payment of basic rent on or before February 20th of each year that this Lease is in effect, then any interest payments and the late charges owed by Lessee under Subsection [a] because of a default in payment of basic rent, shall be paid to the City of Salamanca. If the City fails to discharge its obligation to Lessee to tender full payment, then Lessee shall pay such interest payments and late charges to Lessor.

[c] In the even of any failure on the part of the Lessee to pay any additional rent owed to Lessor, Lessor shall have all the rights, powers, and remedies provided for in this Lease or at law or in equity or otherwise as in the case of non-payment of basic rent.

5. **NO COUNTERCLAIM, ABATEMENT, ETC.** Except as otherwise specifically provided in Section 17, rent payable hereunder shall be paid without notice, demand, counterclaim, set-off, deduction, or defense and without abatement, suspension, deferment, diminution or reduction. The intention of the parties [and this Lease, shall be interpreted in accordance with this intent], is that the rent shall be absolutely net to Lessor so that this Lease shall yield to Lessor the full amount of the installments of rent [as adjusted] throughout the term of this Lease, and that all costs, expenses, impositions and obligations of every kind and nature whatever relating to the lease premises shall be paid by Lessee. Except as expressly provided herein, Lessee waives all rights now or hereafter conferred by statute or otherwise, without the consent of the Lessor, to quit, terminate or surrender this Lease or the lease premises or any part thereof, or to any abatement, suspension, deferment, diminution, or reduction of basic rent, additional rent, or any other sum payable to Lessor hereunder.

6. **COVENANT OF QUIET ENJOYMENT.** Except as otherwise specifically provided in Section 1, Lessor covenants that Lessee shall have the quiet and peaceable possession and enjoyment of the lease premises as regard Lessor and anyone acting on Lessor's behalf or under Lessor's direction. This covenant shall extend only to Lessor and shall not extend, however, to act of the other Lessees, owners, or users of adjacent property or property in the vicinity, or to the acts of third parties or other strangers.

7. **DESTRUCTION OF IMPROVEMENTS.** If any improvements on the leased property are destroyed by fire or other causes during the Lease term, Lessee at Lessee's own expense, shall either clear the remaining structure from the site or replace [renovate] the structure within the succeeding twelve [12] months following the incident of destruction.

8. **MAINTENANCE AND REPAIRS.** Lessee, at Lessee's own expense, shall keep the leased property and the adjoining curbs and ways, if any, in good and clean order and condition and, subject to the provisions of Section 7 and 21.3, will promptly make all necessary repairs, replacements and renewals thereof, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements, renovations and renewals shall be equal in quality and class to the original work. Lessor shall not be obligated to make any repairs, replacements, renovations, or renewals of any kind.

9. **WASTE AND NUISANCE, ILLEGAL USE.** Lessee shall not do or permit any act or thing on the leased property which is contrary to law or any legal requirement, which constitutes a public or private nuisance or waste, or which, excepting normal wear and tear, would cause a reduction in property value or would impair the usefulness of the leased property.

10. **HARVESTING.** Lessee shall not harvest from the leased property any natural resources, including without limitation: timber, natural plants, topsoil, sand, gravel, rock, oil and other petroleum products, natural gas and other minerals. Permitted uses include landscaping, gardening for home use, the use of the soil to grow agricultural crops, flowers, bushes and Christmas trees planted by Lessee, pasture cattle, and grow lawns, and the removal of weeds.

11. **SUBDIVIDING.** Lessee shall not subdivide the leased property or any part thereof without the express written approval of Lessor, provided that Lessee may without consent of Lessor, assign to an adjacent Lessee the Lessee's interest in that portion of the lease premises as originally described in Section 1 which is contained within an area not to exceed ten [10] feet from any boundary line of the lease premises, with the consent of said adjacent Lessee, provided that the Lessee shall provide Lessor with notice of any such assignment within [15] days of the making of such assignment, and the description of the lease premises shall be altered in accordance with Section 1 to reflect such an assignment. Written request for subdivision approval must be submitted to Lessor at least 120 days prior to the proposed subdivision date, and Lessor's response shall be provided within 90 days of receipt of said request.

12. **ASSEMBLING PARCELS.** Lessee shall not assemble the leased property or any part thereof with any adjoining or contiguous parcel(s) or land for the purpose of creating a change in use and/or change in the general characteristics of the neighborhood without approval of Lessor and all appropriate regulating agencies now or hereafter affecting or governing property use within the City of Salamanca. Written request for Lessor's approval must be submitted to Lessor at least ninety [90] days prior to the desired date of the proposed change in use which impacts upon the leased property.

13. **LIABILITY FOR CONDITION OF PROPERTY.** Lessee acknowledges that he has examined the leased property prior to the making of this Lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Lessor or his agent which are not herein expressed and Lessee hereby accepts the leased property in its present condition at the date of the execution of this Lease. Lessor shall not be liable for any patent or latent defect in the leased property. As for damage which may be in the future affect the condition of the leased property, or persons thereon, Lessee agrees to hold Lessor harmless for acts of God or nature and acts of third parties, including, without limitation, acts of thefts, burglary, and vandalism and all act of other Lessees on adjacent or nearby property.

Nothing herein shall preclude Lessee from bringing any action necessary to obtain damages from either Lessees of adjacent or nearby property, or third parties, if damages are incurred by Lessee as a result of their actions.

14. **INDEMNIFICATION BY LESSEE.** Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses [including, without limitations, attorneys' fees and expenses], imposed upon or incurred by or asserted against Lessor by reason of [a] ownership of the leased property of any interest therein, or receipt of rent or other sums therefrom, where such claim arises out of an action or omission of Lessee; [b] any accident, injury to or death of persons or loss of or damages to property occurring on or about the demised premises or any part thereof or the adjoining sidewalks; [c] any failure on the part of the Lessee to perform or comply with the terms of this Lease; or [d] performance of any labor or services or the furnishing of any materials or other property in respect of the leased property or any part thereof. In case any action, suit or proceeding is brought against Lessor by reason of such occurrence, Lessee, upon Lessor's request, will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Lessee and approved by Lessor, which approval will not be unreasonably withheld, and Lessor agrees that it will not waive its sovereign immunity, to any claim brought against it that is subject to indemnification under this Section. Such obligations of Lessee under this Section as shall have accrued at the time of any termination of this Lease shall survive any such termination.

15. **HAZARDOUS OR TOXIC WASTE.** Lessee represents to Lessor that prior to the execution of this Lease, Lessee disclosed to Lessor any information Lessee had regarding the existence of any hazardous or toxic waste areas within the leased property and Lessee further agrees to promptly inform Lessor any such hazardous or toxic waste areas of which it may subsequently learn. Lessee agrees to indemnify, defend and save harmless Lessor from and against any and all claims, fines and actions arising out any such hazardous or toxic waste areas or the obligations which may now or hereafter arise to remove therefrom, or otherwise neutralize or contain any such toxic or hazardous substances, unless such condition shall be caused solely by Lessor. Lessor agrees that it will not waive its sovereign immunity to any claim brought against it that is subject to indemnification under this Section. Nothing herein shall preclude Lessee from bringing any action necessary to obtain damages from either Lessees or adjacent or nearby property, or other third parties, if the actions of such persons have caused or contributed to hazardous or toxic waste on the leased premises.

16. **ARBITRATION.** Whenever any issue shall arise concerning any party's compliance with or obligation under any of the terms of this Lease, such issue shall be settled and determined by the Seneca Nation – City of Salamanca Joint Leasing Commission [“Commission”], provided that the legal positions reserved under Section 28 infra shall not be subject to presentation to or resolution by the commission. Lessor, Lessee, and the City of Salamanca shall all have the right to initiate arbitration by filing a complaint with the Commission and, subject to their right to appeal, Lessor, Lessee, and the City of Salamanca agree to be bound by the decision of the Commission.

17. **NOTICE OF RENT DUE.** The parties agree that the City of Salamanca, under procedures approved by the Seneca Nation – City of Salamanca Joint Leasing Commission shall mail to lessee or to the person or persons succeeding to his interest, as show by the records of the Clerk of the Seneca Nation, between January 1 and January 31, of each year, a notice setting forth the amount of rent to become due on this Lease on February 20th, to be tendered to the City

by February 15th, provided that the failure to mail such notice shall not in any respect relieve Lessee or his successors or the City, of the obligation to pay rent in accordance with the terms of this Lease.

18. **LESSOR'S ACCESS TO PROPERTY.** The parties agree that Lessor may at any time, during the term of this Lease, enter upon the Lease premises [but not improvements] for the purpose of: [i] investigating compliance with the terms of this Lease, provided that reasonable cause to investigate compliance exists for such entry if done more frequently than annually; [ii] for the removal of merchantable timber; and [iii] for the exploration, development and removal of gas, oil, and other minerals, including sand and gravel; provided that Lessee shall be fully compensated for damages resulting from such entrances; that Lessor shall provide Lessee with reasonable prior notice of its intent to enter; that the entry shall be during reasonable business hours and shall be made by officials or employees of Lessor and provided further, that no shade trees or ornamental trees shall be removed by Lessor from any improved premises and no timber shall be considered merchantable unless suitable for sawing into lumber.

19. **TRANSFER OF LESSEE'S INTEREST.**

19.1 **Lessee's Right to Sublet or Assign.** Lessee shall have the right at any time to sublet the leased property or to assign this Lease; provided that: [1] Lessee shall provide Lessor with Notice of Subletting or Assignment at least thirty [30] days prior to the effective date of said subletting or assignment; [2] the subletting or assignment shall be by an instrument in writing bearing the endorsement of the sublessee or assignee expressly assuming all the obligations of Lessee under this Lease; and, [3] copies of the instrument required by part two [2] of this Subsection shall be filed by Lessee with the Lessor, the City of Salamanca, the Seneca Nation – City of Salamanca Joint Leasing Commission, and the Cattaraugus County Clerk's Office.

Where the subletting is for a term of three [3] years or less, the requirements of Section 19.1[1]-[3] shall not apply.

19.2 **Lessee's Liability After Subletting or Assignment.** Any sublease entered into by Lessee shall not relieve Lessee of any of its obligation to pay rent, and Lessee shall remain liable for full payment of the rent and other required payments according to the terms of this Lease. Any assignment of the lease premises shall relieve Lessee of all liability for rent after all the filings required by Section 19.1 have been completed.

19.3 **Transfer Upon Death of Lessee.** This Lease shall pass by will and by the laws of the State of New York; provided however, that the rights of any Indian Lessee in this Lease shall descend as provided by the laws of the Seneca Nation. When the Lease or any part of it is transferred by will or by inheritance without a will, an instrument in writing showing the succession and expressly assuming all obligations of the Lessee, shall be filed by the person succeeding to Lessee's interest with the Lessor, the City of Salamanca, and the Seneca Nation – City of Salamanca Joint Leasing Commission, and the Clerk of Cattaraugus County. Where the City of Salamanca receives Notice of Transfer Due to Death of a Lessee, it shall notify the successor of the obligation to file an instrument under this Section, and shall send a copy of such notice to the Lessor and the Joint Leasing Commission. All such instruments shall be filed within one [1] year of the Lessee's death. The Joint Leasing Commission shall develop any procedures for transferring this Lease or, at the Commission's option, other documentation of transfer of the Lessee's interest upon Lessee's death.

20. ENCUMBRANCES.

20.1 Pre-existing Encumbrances. Lessee agrees and accepts that Lessee's estate as hereby created, shall be subject to such legal liens and encumbrances with heretofore attached to or affect the prior Lease of the property described in Section 1, [which prior Lease is No(s). _____], in the same order or priority in which they attached to or affected the prior Lease, except that nothing herein contained shall be deemed to re-establish or recreate any lien or encumbrance which has been legally or validly terminated.

20.2 Liens. Lessee shall keep the fee estate of the leased premises free and clear from all mechanics' and materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished or to be used in or about the lease premises for or in connection with any operations of Lessee, or any alterations, improvements, repairs, or additions which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the leased property.

20.3 Leasehold Mortgage. Lessee shall have the right, without the Lessor's consent, to encumber Lessee's interest in this Lease under a mortgage and to assign this Lease as collateral security thereof; provided however, that at the time of making such mortgage, there is no existing and unremedied default on the part of the Lessee under any of the agreements, terms, covenants and conditions of this Lease; and provided that the Lessor and the Joint Leasing Commission shall certify to the mortgagee whether: [1] there is any known default of the Lease; [2] Lessee has received notice of a default; and, [3] there is any pending investigation of a default by either Lessor or the Joint Leasing Commission within fifteen [15] days of a written request by the mortgagee unless Lessor shall request a ten [10] day extension of time to make such certification; provided further, that if no certification is made by Lessor in accordance with this Section, no further certification need be made and no existing default or pending investigation shall be deemed to exist at that time; and providing further, that no mortgage shall extend to or affect the revisionary interest and estate of Lessor in the lease premises, or in any manner attached to or affect the lease premises from any after any expiration or termination of this Lease and of the terms hereof; and provided further, that no mortgage shall be binding upon Lessor to constrain in any way the enforcement of Lessor's rights and remedies unless and until a fully executed counterpart thereof, in recordable form, or a duly certified copy of any such recordable mortgage shall be delivered to Lessor and Lessor shall not be bound by or be deemed to have any notice of any mortgage unless and until the same shall have been delivered as aforesaid, notwithstanding any other form of notice, actual or constructive, which may occur or be claimed to have occurred. A copy of any executed mortgage shall also be provided to the Lessor and the Joint Leasing Commission. Mortgagee on behalf of the Lessee-mortgagee shall have the right and option to renew this Lease in accordance with Section 3 thereof.

21. RIGHT TO PERFORM LESSEE'S COVENANTS.

21.1 Notice. Lessor shall give to the City of Salamanca and to the mortgagees of any mortgage which conforms to the provisions of Section 20.3, a copy of any notice or other communication given by Lessor to Lessee hereunder at the same time that the notice is given to Lessee. Lessor shall not exercise any right, power or remedy with respect to any default hereunder and notice to Lessee of any such default and no termination of the Lease is connected therewith shall be effective, unless Lessor shall have given to the mortgagee and the City of

Salamanca, written notice or a copy of its notice to Lessee of such default or any such termination, as the case may be.

21.2 **Forebearance by Lessor of Remedies Upon Default.** Lessor shall not exercise any right, power or remedy with respect to any default or breach as set forth in Section 22 until 30 days after the date on which the Lessor gives to the mortgagee and the City of Salamanca, written notice of such default, or a copy of its notice to Lessee of such default. Subject to Section 22[a], Lessor will not exercise any right, power or remedy with respect to any default hereunder if: [a] the mortgagee or the City of Salamanca, within such thirty [30] day period, shall give to Lessor written notice that the mortgagee or the City intends to undertake the correction of such default or to cause the same to be corrected; and [b] the mortgagee or the City of Salamanca shall thereafter prosecute diligently the correction of such default, whether by exercise on behalf of the Lessee of its obligations hereunder, entry on the leased property, foreclosure, or otherwise. Unless the Lessor and the City of Salamanca or the mortgagee, as the case may be, agree in writing to a different period, the time to cure the default shall be sixty [60] days from the date of the notice referred to in Subsection 21.2[a], provided that as set forth in Section 22[a], where the Lessee fails to tender the rent to the Lessor when the rent is due and payable, the time to cure shall be thirty [30] days from the written notice of default, and provided further that where the default consists of an action that can be ceased immediately upon receipt of Notice of Default, the time to cure shall be seven [7] days from the receipt of the notice, and provided further, that where the default creates a significant danger to health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty-eight [48] hours of receipt of the notice by the City or the mortgagee, as the case may be, and the time to cure shall be the shortest feasible period, not to exceed ninety [90] days, unless otherwise agreed in writing by Lessor and the City of Salamanca or the mortgagee.

21.3 **Performance on Behalf of Lessee.** Lessor, the mortgagee or the City of Salamanca may make any payment or perform any action required hereunder to be made or performed by Lessee with the same effect as if made or performed by Lessee. The City of Salamanca or the mortgagee, as the case may be, shall provide written notice to Lessor of its intent to perform the Lessee's obligations. No entry by Lessor, the mortgagee or the City of Salamanca upon the lease premises for such purpose shall constitute or be deemed to be an eviction of Lessee. Such payment, performance, or action shall not waive or release Lessee from any obligation or default hereunder except that obligation or default which shall have been fully performed or corrected by such payment or performance by the mortgagee or the City of Salamanca. Lessee shall be liable for and shall pay to Lessor in connection with the performance of any such act, and such sums shall constitute additional rent payable by Lessee hereunder. Where the City of Salamanca performs Lessee's obligations, the Lessee shall be liable to the City for such sums, costs, and expenses.

22. **DEFAULT OR BREACH.** Each of the following events shall constitute a default or breach of this Lease by Lessee:

[a] If Lessee shall fail to tender to the City of Salamanca the annual payment of basic rent when the payment is due and payable and if the City of Salamanca shall fail to forward Lessee's payment to the Nation when the payment is due and payable, notwithstanding its obligation to ensure Lessee's payment, and if neither Lessee nor the City of Salamanca shall make the payment within thirty [30] days after written notice thereof by Lessor to Lessee and the City of Salamanca.

[b] If Lessee shall fail to perform or comply with any other terms of this Lease and such failure shall continue for more than thirty [30] days after written notice thereof from Lessor to lessee and Lessee shall not within such period to commence with due diligence and dispatch in curing of such default or if Lessee shall, within such period, commence with due diligence and dispatch to cure such default and shall thereafter fail or neglect or prosecute and complete with due diligence and dispatch the curing of such default. Unless the Lessee and the Lessor agree in writing, to a different period, the time to cure the default shall be ninety [90] days from the date of the written notice to the Lessee of the default, provided that where the default consists of an action that can be ceased immediately upon receipt of Notice of Default, the time to cure shall be forty-eight [48] hours from receipt of the notice, and provided further, that where the default creates a significant danger to the health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty-eight [48] hours of receipt of the notice by the Lessee, and the time to cure shall be the shortest feasible period, not to exceed ninety [90] days unless otherwise agreed in writing by the Lessor and the Lessee.

[c] If Lessee shall abandon the lease premises.

[d] If Lessee shall use or permit the use of the leased premises for any unlawful purpose of any on-going or continuous nature and/or which creates dangerous, hazardous or otherwise highly undesirable conditions in the surrounding community.

If the Lessee premises had been sublet and the original Lessee did not know or have reason to know of the unlawful use, the Lessee may cure the default as provided in Section 22[b] by ending the unlawful use and reoccupying the premises or subletting to a suitable subtenant.

23. **LESSOR'S REMEDIES ON DEFAULT.** In the event of any default hereunder, in addition to the remedies as set forth in Section 22, the rights of Lessor shall be as follows:

[a] Lessor shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Lessee hereunder, by giving to Lessee not less than 30 days' notice of the cancellation and termination. Such notice shall follow expiration of the thirty [30] day Notice of Default and any time to cure under Section 21.2 and 22[a] and [b]. On expiration of the term fixed in the notice, this Lease and the right, title, and interest of Lessee hereunder, shall terminate except as to Lessee's liability.

[b] Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term, or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the leased property for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of any default.

[c] Lessor may re-enter the property immediately and remove the Lessee and any of the property and personnel of Lessee, and store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry, Lessor may terminate the Lease on giving 30 days' written Notice of Termination to Lessee. Without the notice, re-entry will not terminate the Lease. On termination, Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the property, and the worth of the balance of this Lease over the reasonable rental value of the premises for the remainder of the Lease term, which sum shall be immediately due Lessor from Lessee.

[d] After re-entry, Lessor may relet the property or any part thereof for any term without terminating the Lease, at the rent and on the terms as Lessor may choose. Lessor may make alterations and repairs to the property. The duties and liabilities of the parties if the property is relet as provided herein, shall be as follows:

[1] In addition to Lessee's liability to Lessor for Breach of Lease, Lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new Lease agreement and the rent installments that are due for the same period under this Lease.

[2] Lessor shall apply the rent received from reletting the premises: [i] to reduce the indebtedness of Lessee to Lessor under the Lease, not including indebtedness for rent; [ii] to expenses of the reletting and alterations, replacements, renovations, and repairs made; [iii] to rent due under this Lease; or [iv] to payment of future rent under this Lease as it becomes due.

[3] If the Lessee pays all rent and other charges due, with any set-off for rent received by Lessor from reletting the premises, the Lessee shall be permitted to reoccupy the premises and terminate proceedings, if commenced, shall be dismissed.

If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals of the new Lessee have been otherwise applied by Lessor as provided for herein and during any rent installment period, are less than the rent payable for the corresponding installment period under this Lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency period, and before the end of that period. Lessor may at any time after a reletting, terminate the Lease for the breach on which Lessor had based the re-entry and subsequent relet of the property.

[e] Should Lessor elect to re-enter and repossess the demised property, Lessor may do so by force, summary proceedings, ejectment or otherwise and may remove Lessee and all other persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession, or removal.

24. **FURTHER REMEDIES.** In addition to the right to terminate this Lease and/or repossess the property, Lessor in the event of default by Lessee, shall have the right to collect from Lessee all rent and other charges which shall have accrued, shall have the right to sue for other damages or injunctive relief, as appropriate, and further, shall have the right to exercise all other rights, powers, and remedies now or hereafter existing at law or in equity or by statute or otherwise. Lessor may exercise any or all of these rights even if Lessor elects not to terminate the Lease and/or repossess the lease premises.

25. **REMEDIES CUMULATIVE.** Each right, power, and remedy of Lessor provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights, powers, or remedies provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers, or remedies to the fullest extent permitted by law.

26. **NO WAIVER BY LESSOR.** No failure by Lessor to insist upon the strict performance of any term hereof or to exercise any right, power, or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Lessor with respect to cure defaults as set forth in Section 21 and 22 shall not be affected by this Section.

27. **LESSEE'S WAIVER OF STATUTORY RIGHTS.** In the event of any termination of this Lease or repossession of the lease premises pursuant to Section 23, Lessee, so far as permitted by law, waives any right of redemption, re-entry, or repossession and the benefits of any law now or hereafter in force exempting property from liability from rent or for debt. In the event Lessee should be legally discharged in bankruptcy from further obligations under the Lease, the City of Salamanca shall thereafter make all payments required hereunder to Lessor as required by Article II. B. of its Agreement with the Lessor.

28. **LEGAL POSITIONS.** The parties agree that this Lease, including its execution and implementation: [1] shall not foreclose either party from making any contention with respect to the interpretation of the 1875 and 1890 Acts or any claim of being or not being a Lessee under these Acts; and [2] shall not be deemed an admission by either party with respect to the interpretation of these Acts, now or in the future, provided however, that questions of the interpretation of the 1875 or 1890 Acts shall not be presented to the Joint Leasing Commission or otherwise subject to arbitration.

29. **PARTIES BOUND.** The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and, except as otherwise provided, all of the parties hereto shall be jointly and severally liable hereunder.

30. **TIME OF THE ESSENCE.** Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

31. **SECTION CAPTIONS.** The captions appearing after the Section number designations of this Lease are for convenience only and are not part of this Lease and do not in any way limit or amplify the provisions of this Lease.

32. **NOTICES.** All notices, filings, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class, registered, or certified mail, postage prepaid, address: [a] if to Lessee: _____, Salamanca, New York 14779, or at such other address as Lessee shall have furnished to Lessor; [b] if to Lessor: Clerk of the Seneca Nation, PO Box 321, Salamanca, New York 14779, or at such other address as Lessor shall have furnished to Lessee; [c] if to mortgagee, at such address as the mortgagee shall have furnished to Lessor and Lessee; [d] if to the City of Salamanca, 225 Wildwood Avenue, Salamanca, New York 14779, Attention: City Comptroller, or at such other address as the City shall have furnished to Lessor and Lessee; or [e] if to the Seneca Nation – City of Salamanca

Joint Leasing Commission, at such address as the Commission hereafter designates. Notices and filing shall be in such form as approved by the Joint Leasing Commission.

33. **LEASE MODIFICATION**. The terms and provisions of this Lease shall not be waived, modified, or changed without written consent of the Lessor.

IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in duplicate by its duly authorized officers, and its seal to be hereunto affixed this ____ day of _____, 2009, and the Lessee has hereunto set his hand and seal this ____ day of _____, 2009.

SENECA NATION OF INDIANS
BY:

LESSEE(S)

BARRY E. SNYDER, SR., PRESIDENT
THE SENECA NATION OF INDIANS

Property Address:

Salamanca, NY 14779

ATTEST:

{ S E A L }

LENITH K. WATERMAN, CLERK
THE SENECA NATION OF INDIANS

STATE OF NEW YORK }
ALLEGANY TERRITORY } ss.
COUNTY OF CATTARAUGUS }

On this ____ day of _____, in the year of 2009, before me, the undersigned personally appeared _____, personally known to me, or proved to me, on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

STATE OF NEW YORK }
CATTARAUGUS TERRITORY } ss.
COUNTY OF ERIE }

On this _____ day of _____, in the year 2009 before me personally appeared **BARRY E. SNYDER, SR., PRESIDENT**, known to me or proved to me on the basis of satisfactory evidence to be the individual who being by me duly sworn, did depose and say that he is the **PRESIDENT** of the **SENECA NATION OF INDIANS**, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the Seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order, signed his name to this lease, as President.

Notary Public

STATE OF NEW YORK }
CATTARAUGUS TERRITORY } ss.
COUNTY OF ERIE }

On this _____ day of _____, in the year 2009 before me personally appeared **LENITH K. WATERMAN**, known to me or proved to me on the basis of satisfactory evidence to be the individual who being by me duly sworn, did depose and say that she is the **CLERK** of the **SENECA NATION OF INDIANS**, that she knows the seal of the Nation; that she affixed the seal of the Nation to this lease; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and by like order she attested the same as Clerk.

Notary Public

ATTACHMENT "A"
SURRENDER

NEW LEASE NO.: CS- _____
Former Lease No(s): _____

I, _____, hereinafter designated as Lessee, hereby surrenders to the Seneca Nation of Indians, hereinafter designated as Lessor, Former Lease No(s): _____. Lessee's surrender of Former Lease No(s): _____, is made expressly subject to the term of Lease No. CS- _____, and shall be subject to the full reservation of all legal rights by both parties contained in Section 28 of Lease No. CS- _____.

The undersigned Lessee herewith submits lease surrender document(s) to the Seneca Nation of Indians in escrow on the condition that such surrender documents(s) shall not become effective until such time as the new lease which the undersigned has received is not subject to preconditions for its effectiveness.

Lessee: _____

STATE OF NEW YORK }
ALLEGANY TERRITORY } ss.
COUNTY OF CATTARAUGUS }

On this ____ day of _____, in the year of 2009, before me, the undersigned personally appeared _____, personally known to me, or proved to me, on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

EXHIBIT 3

**SENECA NATION OF INDIANS
CONSTITUTION, TREATIES, AND OTHER RELEVANT LAWS**

Culture

Birth of a Nation

Treaties

Clans

Historic Seneca Leaders

Seneca Nation Constitution

Veterans

Genealogy

Seneca Nation Constitution

CONSTITUTION OF THE SENECA NATION OF INDIANS OF 1848, AS AMENDED (Effective November 9, 1993)

Made and adopted in convention assembled, duly called and organized in accordance with the provisions of the Constitution of the said Nation, convened at the Council House at Cold Spring on the Allegany Reservation; and also at the Council House on the Cattaraugus Reservation, on the 15th day of November, 1898.

We the people of the Seneca Nation of Indians, residing on the Cattaraugus, Allegany, and Oil Spring Reservations, in the States of New York, grateful to Almighty God of our national preservation, growth and prosperity, for the freedom and manifold blessings heretofore by us enjoyed honoring the traditions of our Nation, trusting in the present, with confidence in the future advancement and better condition of our race and desiring greater enlightenment in order to perpetuate our national relations to provide for ourselves greater safeguards to pursuit of life, liberty and happiness, and to bring ourselves, as a Nation, to as high a plane intellectually, socially, morally as possible, do make, adopt and establish the following resolution:

SECTION I.

Our government shall have a legislative, executive, and judiciary department.

The legislative power shall be vested in a Council of sixteen members, who shall be known and called the Councillors of the Seneca Nation of Indians, eight Councillors elected to the Council shall be from the Cattaraugus Reservation, and eight Councillors elected to the Council shall be from the Allegany Reservation. Councillors shall be elected for four-year terms, except for the November, 1978 election. The staggered terms will be determined by the four Councillors having obtained the highest number of votes from the Allegany and Cattaraugus Reservations. The four Councillors, per reservation, with the least number of majority votes shall serve a two year term. No person shall be eligible for the office of Councillor unless he is an enrolled member of the Nation, has attained age twenty-one (21), and has resided on the Reservation he represents for at least one (1) year prior to the date on which he takes office.

The first election under the Constitution will be held on the first Tuesday of November, 199, and thereafter on the first Tuesday of November every second year. The votes of the Nation shall be by single ballot containing the names of all party candidates and independent candidates, and shall be cast by the individual voter, out of presence of others, and be cast by him, without inspection by the Board of Inspectors. That on Election Day the polls shall be open at 9:00 a.m. and close at 7:00 p.m.

On or before the 15th day preceding the biennial election, all candidates shall file with the Clerk of the Nation their name and office, and no further candidate shall be allowed to file for office after the 15th day preceding the biennial election, except in case of death, substitution will be permitted on party tickets so filed.

This single ballot shall be printed at the expense of the Nation, and by the Clerk distributed to the Board of Electors twenty-four (24) hours before the date of the election.

SECTION II.

Ten of said Councillors when assembled in session regularly organized shall constitute a quorum for the transaction of business.

In all appropriations of public money an affirmative vote of at least ten of the whole number elected shall be necessary. It shall not be lawful for the Council to make appropriations of public money in any one year exceeding the sum of the aggregate revenue of that year; but the Council shall make appropriation of public money to carry on the government in extraordinary cases for the welfare of the Nation.

In case of vacancy in the office of the president, the Council shall choose from their number a president, who shall hold office until his successor shall be duly elected and shall have qualified.

In case of absence of the president, the Council shall choose from their number a presiding officer pro tempore.

The council shall have the power of impeachment, by vote of the majority of all the members elected.

The court for the trial of an impeachment shall be composed of the president and the Council or a majority of them in all cases except in that of the trial of the president; in that case, the court for the trial of impeachment shall be

composed of at least a majority of the Council and of the surrogates of the Nation.

SECTION III.

The executive power shall be vested in a president whose duty it shall be at all times to preside over the deliberations of the Council having a casting vote therein.

The president shall from time to time give to the Council information of the state of the Nation and recommend to their consideration such measures as he shall judge necessary and expedient, not inconsistent with the true spirit and intent of the laws of the Seneca Nation. It shall be his duty to see that the laws applicable to the Nation are faithfully executed. He shall have power to fill all vacancies by appointment that shall occur either by death, resignation or impeachment of any of the officers of the Nation.

Such appointees shall hold office until their successors are elected and duly qualified.

The president shall have the power of veto. Every resolution or other measure, passed by Council carrying with it any appropriation out of the funds of the Nation, before it becomes operative shall be presented to the president for his approval or objections; if he approves, he shall sign it; but if not, he shall return it to the Council with his objections in writing.

The objections shall be entered at large on the minutes of the Clerk; after which the same may become operative and binding on the Nation only by a second passage of the same by not less than twelve votes of the Council.

In all such cases, the name of each member voting shall be entered in the journal of the proceedings of the Council.

SECTION IV.

The Judicial power shall be vested in a Court of Appeals, a Peacemakers Court, and a Surrogates Court. There shall be one Court of Appeals. There shall be two Peacemakers Courts and two Surrogates Courts, one each to be established upon the Cattaraugus Reservation and one each to be established upon the Allegany Reservation.

The Court of Appeals shall be comprised of six judges, any three of whom shall hear each appeal. The judges of the Court of Appeals shall be trained in the law. The Peacemakers Court shall be comprised of three judges each, and two of

whom shall have the power to hold Court and discharge all the duties of the Peacemakers Court. The Surrogates Court shall be comprised of one judge each.

The judges of the Court of Appeals shall be elected from the residents of the Allegany, Cattaraugus and Oil Springs Reservations, with three of the judges elected from the residents of the Cattaraugus Reservation and three of the judges elected from the residents of the Allegany and Oil Springs Reservations. The judges of each of the Peacemakers and Surrogates Courts on the Cattaraugus Reservation shall be elected from the residents of the Cattaraugus Reservation and the judges of each of the Peacemakers and Surrogates Courts on the Allegany Reservation shall be elected from the residents of the Allegany and Oil Springs Reservations. The election of judges shall be on the first Tuesday of November. Beginning in 1993, judges shall not be elected in the same year that the other Nation officials are elected. Judges elected in November, 1992 shall serve in office until their successors are duly elected in November, 1993, provided that judges of the Court of Appeals shall first be elected in November 1993.

The term of office of the judges of the Court of Appeals shall be four years. At the first election of the judges of the Court of Appeals, three positions on the Court of Appeals initially shall be for a term of two years and three positions initially shall be for a term of four years. The term of each position shall be determined by a lot prior to the election, provided that at least one judge from each Reservation shall serve a two year term. All subsequently elected judges of the Court of Appeals shall be elected for a term of four years.

The term of office of the Peacemakers and Surrogates shall be four years, provided that, at the next judicial election following the approval of this amendment, except if judicial elections are moved to an off-year, one Peacemaker from each Peacemakers Court shall be elected for a term of two years, with the remaining two Peacemakers from each court and all subsequently elected Peacemakers elected for a term of four years.

The judicial power shall extend to all cases arising under this Constitution, the customs of laws of the Nation, and to any case in which the Nation, a member of the Nation or any person or corporate entity residing on, organized on, or doing business on any of the Reservations shall be a party.

The forms of process and proceedings in all Courts shall be such as is prescribed by law.

All determinations and decisions of the Peacemakers and Surrogates Courts shall be subject to appeal to the Court of Appeals. All cases of appeal shall be decided by the Court of Appeals upon the evidence taken in the Peacemakers

and Surrogates Courts. In every case on appeal, it shall be the duty of the judge or judges before whom the case was heard to certify the evidence and record in that case to the Court of Appeals. The Court of Appeals shall then decide the case upon the certified evidence and record. Upon the hearing of the appeal, a party shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

All determinations of the Court of Appeals shall be subject to appeal to the Council upon the granting of a writ of permission by a vote of not less than seven Councilors. Such appeal, if granted, shall be heard by at least a quorum of the Council. In the event that no appeal is made to the Council, the decision of the Court of Appeals is final, and no other court of subsequently elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of the Court of Appeals. All cases of appeal shall be decided by the Council upon the evidence taken in the Peacemakers or Surrogates Courts. In every case on appeal, it shall be the duty of the judges before whom the case was heard to certify the record in the case to the Council. The Council shall then decide the case upon the certified evidence and record. Upon the hearing of an appeal, a party in interest shall have the right to be heard and to appear in person or by counsel and argue the merits of the case at his own expense.

On such matters of appeal from the Court of Appeals, the decision of the Council shall be final, and no subsequent elected Council shall have the right to re-open, re-hear, reverse or affirm the decision of a previous Council.

In every action in any Court, such action shall be brought in the name of the real party in interest.

Nothing herein shall be construed as affecting the right of any Council to repeal or modify existing laws and regulations passed and approved by a previous Council.

SECTION V.

The power of making treaties shall be vested in the Council, subject to the approval of at least three-fourths of the legal voters and of the consent of three-fourths of the mothers of the Nation.

SECTION VI.

There shall be a clerk and a treasurer of the Nation. The rights, duties and liabilities of such shall be defined by law.

SECTION VII.

There shall be two marshals for the Nation; one shall reside on the Cattaraugus and one on the Allegany Reservation. The rights, duties, and liabilities of each shall be as defined by law.

SECTION VIII.

The Council may provide for the election of Highway Commissioners, Overseers of the Poor, Assessors and Policeman for each of the said Reservations, their duties defined by law.

SECTION IX.

All officers of the Nation named in this Constitution, except for certain officers otherwise provided for herein, shall be elected biennially for the term of two years.

All officers of the Nation named in this Constitution may be impeached or removed for such cause as is recognized by law, in such manner and form as is prescribed by this Constitution.

SECTION X.

Every member of the Seneca Nation of Indians of the age of Twenty-one years and upwards, who shall not have been convicted of a felony, shall be competent to vote at all elections and meetings of the electors of the Nation and shall be eligible to any office in the gift of the people of the Nation. No person shall be eligible for the office of president unless he is an enrolled member of the Nation, has attained the age of thirty (30) years, has resided on the Reservation he represents for at least one year.

SECTION XI.

The compensation of all officers of the Nation named in this Constitution shall be such as prescribed by law and the salaries shall not be increased or diminished during their term of office.

SECTION XII.

The Council of the Nation shall meet, in general session to conduct business of the Nation, on the second Saturday of each month in the year; provided, however that if the second Saturday of any month is a legal holiday or if the Council so votes at its next preceding session, the Council shall meet on the third Saturday of the month.

The president shall have the power to convene the Council in extra session as often as the interests of the Nation in his judgment requires.

SECTION XIII.

The Council shall have the power to make laws not inconsistent with this Constitution.

SECTION XIV.

The laws and regulations heretofore made and adopted by the Council and not inconsistent with this Constitution shall continue in full force and effect as heretofore until repealed or amended, to the extent and in the manner, as the Council shall deem lawful and proper.

SECTION XV.

The present officers of the Nation shall hold their offices respectively until the first Tuesday of November, 1899, until others are elected in their place in accordance with the terms of this Constitution, unless removed for cause.

SECTION XVI.

It shall be lawful for the Council in their discretion, by at least a quorum vote to appoint a committee of three for revision of the Constitution. The duty of the committee shall be on ten days notice of their appointment, to prepare amendments or alterations of the Constitution as amended to the Council.

It shall be the duty of the Council to submit the same to the electors of the Nation for their approval or objection, to be determined by a majority vote of the qualified electors at a meeting called for that purpose on the Cattaraugus and Allegany Reservation, respectively. In the case the proposed amendments of the committee are rejected, no action shall be taken by the Council or the electors relative to amending the constitution within one year from the date of said meeting and rejection.

Canandaigua Treaty of 1794
November 11, 1794
Pickering Treaty

A Treaty Between the United States of America and the Tribes of Indians Called the Six Nations:

The President of the United States having determined to hold a conference with the Six Nations of Indians for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the sachems and warriors of the Six Nations in general council: Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles, which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations....

ARTICLE 1.

Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations.

ARTICLE 2.

The United States acknowledge the lands reserved to the Oneida, Onondaga, and Cayuga Nations in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them, or either of the Six Nations, nor their Indian friends, residing thereon, and united with them in the free use and enjoyment thereof; but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE 3.

The land of the Seneca Nation is bounded as follows: beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps; the line runs westerly along the lake, as far as Oyongwongyeh Creek, at Johnson's Landing Place, about four miles eastward, from the fort of Niagara; then southerly, up that creek to its main fork, continuing the same straight course, to that river; (this line, from the mouth of Oyongwongyeh Creek, to the river Niagara, above Fort Schlosser, being the eastern boundry of a strip of land, extending from the same line to Niagara River, which the Seneca Nation ceded to the King of Great Britain, at the treaty held about thirty years ago, with Sir William Johnson;) then the line runs along the Niagara River to Lake Erie, to the northwest corner of a triangular piece of land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that State; then due east to the southwest corner of the land sold by the Seneca Nation to Oliver Phelps; and then north and northerly, along Phelps' line, to the place of beginning, on the Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca Nation; and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations, or of their Indian friends residing thereon, and united with them, in the free use and enjoyment thereof; but it shall remain

theirs, until they choose to sell the same, to the people of the United States, who have the right to purchase.

ARTICLE 4.

The United States have thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senecas, and engaged never to claim the same, not disturb them, or any of the Six Nations, or their Indian friends residing thereon, and united with them, in the free use and enjoyment thereof; now, the Six Nations, and each of them, hereby engage that they will never claim any other lands, within the boundaries of the United States, nor ever disturb the people of the United States in the free use and enjoyment thereof.

ARTICLE 5.

The Seneca Nation, all others of the Six Nations concurring cede to the United States the right of making a wagon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road for the purposes of traveling and transportation. And the Six Nations and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbors and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes, where necessary, for their safety.

ARTICLE 6.

In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established strong and perpetual, the United States now deliver to the Six Nations, and the Indians of the other nations residing among them, a quantity of goods, of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars heretofore allowed to them by an article ratified by the President, on the twenty-third day of April, 1792, making in the whole four thousand five hundred dollars; which shall be expended yearly, forever, in purchasing clothing, domestic animals, implements of husbandry, and other utensils, suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent, appointed by the President, for the affairs of the Six Nations, and their Indian friends aforesaid.

ARTICLE 7.

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other; by the Six Nations or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the Nation to which the offender belongs; and such prudent measures shall then be pursued, as shall be necessary to preserve or

peace and friendship unbroken, until the Legislature (or Great Council) of the United States shall make other equitable provision for that purpose.

NOTE:

It is clearly understood by the parties to this treaty, that the ---- annuity, stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations, and of their Indian friends united with them, as aforesaid, as do or shall reside within the boundaries of the United States; for the United States do not interfere with nations, tribes or families of Indians, elsewhere resident.

IN WITNESS WHEREOF, the said Timothy Pickering, and the sachems and war chiefs of the said Six Nations, have hereunto set their hands and seals.

Done at Canandaigua, in the State of New York, in the eleventh day of November, in the year one thousand seven hundred and ninety-four.

TIMOTHY PICKERING

Witnesses: Interpreters:

Israel Chapin Horatio Jones
Wm. Shepard, Jun'r Joseph Smith
James Smedley Jasper Parrish
John Wickham Henry Abeele
Augustus Porter
James H. Garnsey
Wm. Ewing
Israel Chapin, Jun'r (Signed by fifty-nine Sachems and War Chiefs of the Six Nations.)

CANANDAIGUA, NEW YORK - NOVEMBER 11, 1794

----- O-NO-YE-AH-NEE O-NA-AH-HAH TUG-GEH-
SHOT-TA
KON-NE-AT-OR-TEE-OOH HOT-OSH-A-HENH TEH-ONG-YOO-WUSH
or Handsome Lake
KAU-KON-DA-NAI-YA TEH-ONG-YA-GAU-NA
TO-KENH-YOU-HAU
or Capt. Key NON-DI-YAU-KA KON-NE-YOO-WE-SOT
O-NES-HAU-EE KOS-SISH-TO-WAU TI-OOH-QUOT-TA-KAU-NA
or Woods On Fire
HENDRICK AUPAUMUT TO-HE-ONG-GO
TA-OUN-DAU-DEESH
DAVID NEESOOHNHUK OO-JAU-GEHT-A
or Fish Carrier HO-NA-YA-WUS
KANATSOYH or Farmer's Brother
or Nicholas Kusick OOT-A-GUAS-SO
SOG-GOO-YA-WAUT-HAU

SOH-HON-TE-O-QUENT JOO-NON-DAU-WA-ONCH or Red Jacket
OO-DUHT-SA-IT KAU-NEH-SHONG-GOO KON-YOO-TAI-YOO
KO-NOOH-QUNG KI-YAU-HA-ONH SAUH-TA-KA-ONG-YEES
or Two Skies Of A Length
TOS-SONG-GAU-LO-LUSS OO-TAU-JE-AU-GENH
or Broken Axe OUN-NA-SHATTA-KAU
JOHN SHEN-EN-DO-A
TAU-HO-ON-DOS KA-UNG-YA-NEH-QUEE
O-NE-AT-OR-LEE-OOH or Open The Way
or Handsome Lake SOO-A-YOO-WAU
TWAU-KE-WASH-A
KUS-SAU-WA-TAU KAU-JE-A-GA-ONH
SE-QUID-ONG-QUEE or Heap Of Dogs
E-YOO-TEN-YOO-TAU-OOK
KO-DJEOTE SOO-NOOH-SHOO-WAU
KOHN-YE-AU-GONG or Half Town
or Jake Stroud THA-OG-WAU-NI-AS
KEN-JAU-AU-GUS
SHA-QUI-EA-SA or Stinking Fish SOO-NONG-JOO-WAU
TEER-OOS SOO-NOH-QUA-KAU KI-ANT-WHAU-KA
or Capt. Prantup or Cornplanter
TWEN-NI-YA-NA
HENRY YOUNG BRANT
JISH-KAA-GA
SOOS-YOO-WAU-NA or Green Grasshopper
or Big Sky or Little Billy

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

Compiled and edited by Charles J. Kappler. Washington : Government Printing Office, 1904.

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TREATY WITH THE SENECA, 1842.

May 20, 1842. | 7 Stat., 586. | Proclamation. Aug 26, 1842.

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Margin Notes
Preamble.
Indenture between Ogden and Fellows and the Seneca Indians.
Indenture between Ogden and Fellows and the Seneca Indians.
Indenture between Ogden and Fellows and the Seneca Indians.
United States agree to said indenture.
Indians who remove under treaty of April 4, 1840, entitled to benefits thereof.
Tenth article of treaty proclaimed April 4, 1840, modified.

Page 537

Articles of a treaty made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May in the year one thousand eight hundred and forty-two, between the United States of America, acting herein by Ambrose Spencer their Commissioner, thereto duly authorized, on the one part, and the chiefs, headmen and warriors of the Seneca nation of Indians, duly assembled in council, on the other part.

WHEREAS a treaty was heretofore concluded, and made between the said United States, and the chiefs, headmen, and warriors of the several tribes of New York Indians, dated the fifteenth day of January in the year one thousand eight hundred and thirty-eight, which treaty

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having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April one thousand eight hundred and forty, to have been duly ratified. And whereas on the day of making this treaty, and bearing even date herewith, a certain indenture was made executed and concluded by and between the said Seneca nation of Indians and Thomas L. Ogden, and Joseph Fellows, assignees under the State of Massachusetts, in the presence, and with the approbation of a Commissioner appointed by the United States, and in the presence and with the approbation of Samuel Hoare, a superintendent on the part of the commonwealth of Massachusetts, which indenture is in the words and figures following to wit:

"THIS INDENTURE made and concluded between Thomas Ludlow Ogden of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario of the one part, and the chiefs and headmen of the Seneca nation of Indians, on the other part at a council duly assembled and held at Buffalo Creek in the State of New York on the twentieth day of May in the year one thousand eight hundred and forty-two in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the commonwealth of Massachusetts, an of Ambrose Spencer a Commissioner thereto duly appointed and authorized on the part of the United States.

"Whereas at a council held at Buffalo Creek on the fifteenth day of January in the year one thousand eight hundred and thirty eight, an indenture of that date was made and executed by and between the parties to this agreement, whereby the chiefs and headmen of the Seneca nation of Indians for the consideration of two hundred and two thousand dollars did grant, bargain, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, all those four several tracts of land, situate within the State of New York, then and yet occupied by the said nation, or the people thereof, severally described in the said indenture, as the Buffalo Creek Reservation, containing by estimation forty-nine thousand nine hundred and twenty acres of land, the Cattaraugus Reservation containing by estimation twenty-one thousand six hundred and eighty acres of land, the Allegany Reservation, containing by estimation thirty thousand four hundred and sixty-nine acres of land, and the Tonnewanda Reservation containing by estimation twelve thousand eight hundred acres of land; a duplicate of which indenture was annexed to a treaty of the same date made between the United States of America and the chiefs, headmen, and warriors of the several tribes of New York Indians assembled in council; which treaty was amended and proclaimed by the President of the United States on the fourth of April one thousand eight hundred and forty, as having been duly ratified; as by the said indenture, treaty and proclamation more fully appear.

"And whereas divers questions and differences having arisen between the chiefs and headmen of the Seneca nation of Indians or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows in relation to the said indenture, and the rights of the parties thereto, and the provisions contained in the said indenture being still unexecuted, the said parties have mutually agreed to settle, compromise and finally terminate all such questions and differences on the terms and conditions hereinafter specified.

"Now therefore it is hereby mutually declared, and agreed, by and between the said parties as follows.

"ARTICLE FIRST.

The said Thomas Ludlow Ogden, and Joseph Fellows in consideration of the release and agreements hereinafter contained, on the part of the said Seneca nation do on their part consent, covenant and agree that they the said nation (the said indenture notwithstanding) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus

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Reservation, and the Allegany Reservation with the same right and title in all things, as they had and possessed therein immediately before the date of the said indenture, saving and reserving to the said Thomas Ludlow Ogden, and Joseph Fellows the right of pre-emption, and all other the right and title which they then had or held in or to the said tracts of land.

"ARTICLE SECOND.

The chiefs and headmen of the Seneca nation of Indians in consideration of the foregoing, and of the agreement next hereinafter contained, do on their part grant, release and confirm unto the said Thomas Ludlow Ogden, and Joseph Fellows, and to their heirs and assigns, in joint tenancy,

the whole of the said two tracts of land severally called the Buffalo Creek Reservation, and the Tonnewanda Reservation, and all the right and interest therein of the said nation.

“ARTICLE THIRD.

It is mutually agreed, between the parties hereto that in lieu of the sum expressed in the said indenture, as the consideration of the sale, and release of the said four tracts of land, there shall be paid to the said nation a just consideration sum, for the release of the two tracts, hereby confirmed to the said Ogden and Fellows, to be estimated and ascertained as follows.

“The present value of the Indian title to the whole of the said four tracts of land including the improvements thereon, shall for all the purposes of this present compact, be deemed and taken to be two hundred and two thousand dollars, of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts, and of the said sum of one hundred thousand dollars the said Ogden and Fellows shall pay to the Seneca nation such proportion as the value of all the lands within the said two tracts called the Buffalo Creek, and Tonnewanda Reservations shall bear to the value of all the lands within all the said four tracts— and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts, shall bear to the value of the improvements on all the said four tracts.

“ARTICLE FOURTH.

The amount of the consideration monies to be paid in pursuance of the last preceding article, shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore examine and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

“The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek Reservation and the Tonnewanda Reservation, and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire whose decision thereon shall be final and conclusive, and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

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“ARTICLE FIFTH.

It is agreed, that the possession of the two pass hereby confirmed, to the said Ogden and Fellows, shall be surrendered and delivered up to them, as follows, viz: The forest or unimproved lands on the said tracts, within one month after the report of the said arbitrators shall be filed, in the office of the Department of War, and he improved lands within two years after the said report shall have been so filed; Provided always that the amount to be so ascertained and awarded, as the proportionate value of the said improvements, shall on the surrender thereof be paid to the President of the United States, to be distributed among the owners of the said improvements,

according to the determination and award of the said arbitrators, in this behalf, and provided further that the consideration for the release and conveyance of the said lands shall at the time of the surrender thereof be paid or secured to the satisfaction of the said Secretary of the War Department, the income of which is to be paid to the said Seneca Indians annually.

"But any Indian having improvements may surrender the same, and the land occupied by him and his family at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the direction of the War Department.

"ARTICLE SIXTH.

It is hereby agreed and declared to be the understanding and intent of the parties hereto, that such of the said Seneca nation, as shall remove from the State of New York, under the provisions of any treaty, made or to be made, between the United States and the said Indians, shall be entitled in proportion to their relative numbers to the funds of the Seneca nation, and that the interest and income of such their share and proportion of the said funds, including the consideration money to be paid to the said nation in pursuance of this Indenture, and of all annuities belonging to the said Nation shall be paid to the said Indians so removing at their new homes, and whenever the said tracts called the Allegheny and the Cattaraugus Reservations, or any part thereof shall be sold and conveyed by the Indians remaining in the State of New York, the Indians so removing shall be entitled to share in the proceeds of said sales in the like proportion. And it is further agreed and declared, that such Indians owning improvements in the Cattaraugus and Alleghany tracts as may so remove from the State of New York, shall be entitled on such removal, and on surrendering their improvements to the Seneca nation, for the benefit of the nation to receive the like compensation for the same, according to their relative values, as in the third and fourth articles of this treaty are stipulated to be paid, to the owners of improvements in the Buffalo Creek and Tonnewanda Tracts, on surrendering their improvements; which compensations may be advanced by the President of the United States, out of any funds in the hands of the Government of the United States, belonging to the Seneca nation, and the value of these improvements shall be ascertained and reported by the Arbitrators, to be appointed in pursuance of the fourth article.

"ARTICLE SEVENTH.

This Indenture is to be deemed to be in lieu of, and as a substitute for the above recited Indenture made and dated the fifteenth day of January, one thousand eight hundred and thirty eight, so far as the provisions of the two instruments may be inconsistent, or contradictory, and the said Indenture so far as the same may be inconsistent with the provisions of this compact, is to be regarded and is hereby declared to be rescinded and released.

"ARTICLE EIGHTH.

All the expenses attending the execution of this Indenture and compact including those of the arbitration and surveys herein before referred to, and also those of holding the treaty now in

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negotiation between the United States and the said Seneca Nation, except so far as may be provided for by the United States, shall be advanced and paid by the said Ogden and Fellows.

"ARTICLE NINTH.

The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession from all taxes, and assessments for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them.

"In witness whereof, the parties to these presents have hereunto, and to three other instruments of the same tenor and date, one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca Nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written."

THEREFORE taking into consideration the premises it is agreed and stipulated by and between the United States of America and the Seneca nation of Indians, as follows, to wit:

First, The United States of America consent to the several articles and stipulations contained in the last recited Indenture between the said nation, and the said Thomas Ludlow Ogden and Joseph Fellows, above set forth.

Second, The United States further consent and agree that any number of the said nation, who shall remove from the State of New York, under the provisions of the above mentioned Treaty proclaimed as aforesaid, on the fourth day of April one thousand eight hundred and forty, shall be entitled in proportion to their relative numbers to all the benefits of the said Treaty.

Third, The United States of America further consent and agree, that the tenth article of said Treaty proclaimed as aforesaid on the fourth day of April one thousand eight hundred and forty, be deemed, and considered as modified, in conformity with the provisions of the Indenture hereinabove set forth, so far as that the United States will receive and pay the sum stipulated to be paid as the consideration money of the improvements therein specified, and will receive hold and apply the sum to be paid, or the securities to be given for the lands therein mentioned, as provided for in such Indenture.

In testimony whereof the undersigned Ambrose Spencer Commissioner on the part of the United States of America, and the undersigned chiefs and headmen of the Seneca nation of Indians, have to two parts of this treaty. one thereof to remain with the United States, and the other thereof with the Seneca nation of Indians, set their hands and affixed their seals the day and year first above mentioned.

Ambrose Spencer.

Tit-ho-yah, or William Jones,

Saul Lagure,

Gau-geh-gruh-doh, or George Jimison,

N. T. Strong,

Hau-neh-hoys-soh, or Blue Eyes,

Jabez Stevenson,

William Krouse,

Samuel Wilson, or Ni-ge-jos-a,

William Krouse,

Thompson S. Harris,

Sah-go-en-toh, or Morris Halftown,

Ten-wan-ne-us, or Governor Black Snake,

Doa-ne-pho-gah, or Little Johnson,

Joh-nesh-ha-dih, or James Stevenson,

Ho-wah-tan-eh-goh, or John Pierce,

Da-gon-on-de, or William Patterson,

Samuel Goudon,

Tunis Halftown,

Hau-sa-nea-nes, or White Seneca,

Gah-nang-ga-eot, or Young Chief,

Thomas Jameson,

Moses Stevenson,

Jonah Armstrong,

Joseph Silverheels,

Da-o-as-sah-au, or Jo. Hunlock,

George Fox,

Yaw-sau-ge, or Peter Johnson,

Noh-sok-dah, or Jim Jonas,

Dih-no-se-du, or Jacob Shongo,

John Seneca, or Jo-on-da-goh,

Ho-no-yea-os, or Jacob Bennett,

George Turkey,

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Daniel Fau Guns,

Goat-hau-oh, or Billy Shanks,

Daniel Fau Guns,

Goat-hau-oh, or Billy Shanks,

James Pierce,

Gi-eut-twa-geh, or Robert Watt,

Seneca White,

Gesh-u-aw, or James Shongo,

Jarvis Spraing,

Ti-at-tah-co, or Adam Dextador,

Moris B. Pierce,

So-goo-quas, or John Tallchief,

Isaac Halftown,

David Snow,

John Bark,

George Killbuck,

George Dennis,

John Kennedy, sen.,

Abram John,

Job Pierce,

Saw-da-ne, or George Deer,

Ga-na-waw, or John Cook,

Jaw-ne-es, or John Dickey,

George Big Deer,

Nah-joh-gau-eh, or Tall Peter,

John Kennedy, jr.

Signed sealed and delivered in the presence of——. (The words "and Allegany" in the sixth page being interlined.)

A. Dixon, Commissioner on the part of O. H. Marshall, New York.

Benj. Ferris,

Orlando Allen,

Asher Wright,

Elam R. Jewett,

Cortland B. Stebbins,

Joseph S. Wasson.

(To the Indian names are subjoined a mark and seal.)

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SENECA NATION OF INDIANS
COMPREHENSIVE CONSERVATION LAW
ADOPTED ON January 14, 2012

CHAPTER I. PURPOSE & DEFINITIONS

A. PURPOSE

The purpose of this comprehensive Conservation Law is to set forth rules and regulations for the conservation of Seneca Nation resources and to control hunting, fishing, and trapping within the Territories of the Seneca Nation of Indians to protect the health, welfare and safety of Seneca Nation citizens. Upon enactment of this Law, any and all prior laws of the Nation relating to the same subject matter shall be repealed, provided that offenses occurring prior to the effective date of this Law shall be adjudicated in accordance with the law or custom in effect at the time of the offense.

The Seneca Nation of Indians Conservation Department is responsible and hereby authorized to enforce the provisions of this Law. Conservation Officers may utilize Marshals and Game Wardens as required.

B. DEFINITIONS

The following definitions apply only as to this Law and no other Seneca Nation laws, codes, or policies:

(1) "Angling" shall mean the taking of fish by hook and line, including bait and fly fishing, casting, trolling, and use of landing nets in waters up to two foot (2 ft.) deep.

(2) "Black Bass" shall mean both largemouth and smallmouth bass.

(3) "Blind Snatching" shall mean the taking of fish by snatching when the fish is not visible to the fisherman.

(4) "Clerk" shall mean the Clerk of the Seneca Nation of Indians.

(5) "Court" shall mean the Seneca Nation of Indians Peacemakers Court.

(6) "Fishing" shall mean taking, killing, netting, capturing or withdrawal of fish by any means; this includes every attempt to take fish, as well as assisting another person in taking or attempting to take fish.

(7) "Foul-hooked" means not hooked in the mouth.

(8) "Illegal Fishing" shall mean the taking, killing, netting, capturing, withdrawing or attempting to take, kill, net, capture, or withdraw fish from the waters of the Seneca Nation of Indians by any means other than angling by Non-Member and Non-Indians.

(9) "Law Enforcement" or "Law Enforcement Officer" shall mean Conservation Officers, Marshals, or Game Wardens of the Seneca Nation of Indians.

(10) "Member" shall mean an enrolled member of the Seneca Nation of Indians.

(11) "Minimum Length" shall mean the greatest possible length measured from the tip of the fish's snout to the tip of its tail. The mouth may be open or closed and the tail may be spread or compressed in order to achieve the greatest length.

(12) "Nation" shall mean the Seneca Nation of Indians.

(13) "Nation Lands" shall mean the lands and territories of the Seneca Nation of Indians, including the Allegany, Cattaraugus, Oil Spring, Buffalo Creek and Niagara Falls Territories, and any other lands controlled by and under the governmental jurisdiction of the Seneca Nation of Indians, and includes that portion of an incorporated city or congressional village that is within any Territory of the Seneca Nation of Indians.

(14) "Nation Waters" shall mean any stream, brook, creek, lake, river, reservoir or any other body of water man-made or natural running through, located on or adjacent to Nation Lands.

(15) "Netting" shall mean use of any seines, traps, cast nets, and gill nets.

(16) "Night" shall mean one-half (½) hour after sunset to one-half (½) hour before sunrise.

(17) "Non-Member" shall mean any person, who is not an enrolled member of the Seneca Nation of Indians, but is an enrolled member of another Indian nation or tribe, or is a child of an enrolled member.

(18) "Non-Indian" shall mean an individual who is neither a Member nor a Non-Member.

(19) "Person" shall mean a Member, Non-Member or Non-Indian.

(20) "Private Lands" shall mean Nation Lands that are either allotted to Members pursuant to Nation Law or leased to Non-Members or Non-Indians pursuant to Nation Law.

(21) "Public Lands" shall mean Nation Lands which are not Private Lands.

(22) "Snatching/Snagging" shall mean the taking of fish that have not taken or attempted to take bait or artificial lure into their mouth, by either lifting, or by impaling the fish with one or more hooks or similar devices, whether or not baited, into any part of their body.

(23) "Spear-fishing" or "Spear" shall mean a hand-propelled, single or multiple pronged spikes, blade or harpoon. It does *not* include the mechanically propelled device commonly called a spear-gun.

CHAPTER II. GENERAL CONSERVATION

- A. No Person shall litter or dump waste or garbage on Nation Lands or Nation Waters, including its highways, roads, and paths, trails or Private Lands.
- B. No Person shall enter upon Private Lands for the purpose of fishing, hunting, trapping or gathering, without the express written permission of the land holder.

- C. No Person shall drain or divert any natural swamp, pond, lake, or stream unless written permission is granted by the Seneca Nation of Indians between June 1st and August 31st of any given year.
- D. Gravel mining or digging in any Nation Waters, including a natural stream, pool, reservoir or river, is strictly prohibited by any Person.
- E. No Person shall allow dogs to go unleashed or to train for hunting.
- F. Neither Non-Members nor Non-Indians shall enter upon Nation Lands or Nation Waters, including Private Lands, for the purpose of removal of artifacts, wild roots, plants, or any vegetation unless written permission is granted by the Nation.
- G. Neither Non-Members nor Non-Indians shall enter upon Nation Lands or Nation Waters, including Private Lands, for the purpose of camping unless written permission is granted by the Nation, or the land holder on Private Lands.
- H. Neither Non-Members nor Non-Indians shall use or attempt to use Nation Lands, Nation Waters, or any environmental, cultural or mineral resources from Nation Lands or Nation Waters for any commercial purpose. Members must obtain an appropriate permit from the Nation prior to utilizing Nation Lands, Nation Waters, or their resources for a commercial purpose.
- I. Only Members may take and remove topsoil from the Seneca Nation of Indians Territories. Members must obtain an appropriate permit from the Nation prior to utilizing the topsoil for commercial purposes, or prior to removing the topsoil off Nation Lands.
- J. Only Members may operate any type of All-Terrain Vehicle, Snowmobile, Motorcycle, or any type of motorized vehicle off maintained roadways on or through Nation Lands.
- K. Only Members may be in possession of any wild animal or bird within Nation Lands.
- L. The Nation has exclusive right to authorize and issue licenses for hunting, fishing, and trapping on Nation Lands and Nation Waters. Members are not required to obtain a license to fish, hunt, trap or gather on Nation Lands and Nation Waters.

CHAPTER III. HUNTING

- A. In keeping with custom and tradition, the Seneca Nation of Indians will issue hunting licenses to Non-Members (other Six Nation Tribes)
- B. Only Members shall hunt on Nation Lands.
- C. Only Members shall target practice or carry firearms.

- D. Only Members may use artificial means of light or night vision equipment while in possession of a firearm, cross-bow, long-bow, compound bow, rifle, pistol, explosives or black powder devices for the purpose of pursuing or harassing any wildlife within the boundaries of Nation Lands or Nation Waters.

CHAPTER IV. FISHING

A. Licensure.

(1) A Non-Indian or Non-Member may not enter Nation Lands or Nation Waters for the purpose of fishing in Nation Waters, unless in accordance with the Seneca Nation of Indian Comprehensive Conservation Law including the Fishing Regulations in Subpart (C) of this Chapter, all other applicable Nation laws, and after issuance of a valid Fishing License from the Clerk.

(2) A Fishing License shall entitle the holder to fish in Nation Waters in accordance with these Regulations, and all other applicable Nation laws, and shall be valid only for the Calendar Year of issuance except for: (a) Permanently issued Senior Citizen Licenses, and (b) Temporary Licenses, which are only valid for three days.

(3) Non-Members may obtain a Seneca Nation of Indians Fishing License, free of charge, by presenting his/her enrollment card to the Clerk during normal business hours.

(4) A Non-Indian seeking to fish in Nation Waters shall, upon payment of an appropriate fee, submission of requested information, and providing proper identification, receive a Fishing License from the Clerk.

(5) Non-Members and Non-Indians issued a Seneca Nation Fishing License shall carry the license while fishing and must produce the Fishing License upon request to any Law Enforcement Officer or any Nation Member. Only Seneca Nation of Indians Law Enforcement Officers shall be authorized to impound equipment or issue a citation, when appropriate.

(6) A Seneca Nation Fishing License does not give the holder the right to enter upon Private Lands without the written permission of the land holder.

B. Procedure of the Clerk.

(1) The Clerk shall prepare a form or application for license, such form requiring the applicant's name, address, age, and social security number. The application for license shall contain a statement whereby the licensee agrees not to violate Nation Laws, waives any and all liability of the Nation for any injuries that may result while fishing on Nation Lands and Nation Waters, and consents to the jurisdiction of the Nation Courts.

(2) The Clerk shall issue one copy of the license to the Non-Member or Non-Indian requesting it and shall retain one copy of the license with the records of the Nation. The Clerk is hereby authorized to issue such licenses: (a) to an individual requesting such license in person, or (b) through vendors, who shall be compensated accordingly by the Nation.

(3) The Clerk is authorized to issue a New York State Fishing License to any Member without charge and, except for providing identification information, without satisfying any other requirement.

(4) Fees for a Seneca Nation Fishing License will be set according to a recommendation by Law Enforcement, pending approval by the Clerk.

C. Fishing Regulations.

(1) Any Person must properly discard all fishing line, and all efforts must be made to retrieve broken fishing line for the benefit of local wildlife.

(2) Non-native species or bait shall not be released onto Nation Lands or into Nation Waters by any Person.

(3) It shall be illegal for any Person to discard any fish carcass or parts thereof into freshwaters within one hundred (100) feet of shore, except: (a) if properly disposing into suitable garbage or refuse collection system, or (b) by burial.

(4) Set or trap lines, as well as use of floatation devices using set or trap lines, are strictly prohibited.

(5) Taking of reptiles or amphibians is strictly prohibited.

(6) All Persons must use non-toxic sinkers. Split shot at any weight is strictly prohibited.

(7) Non-Member and Non-Indian license holders are strictly prohibited from blind snatching, foul-hooking, netting, snatching/snagging, and spear-fishing or spearing. Taking any species of fish other than by Angling is prohibited.

(8) Snagging or lifting in shallow waters up to two (2) foot depth is restricted to Coho Salmon ONLY. No other snagging or lifting is allowed.

(9) The use of a dip net to land the fish is authorized; all other forms of Netting are strictly prohibited.

(10) Disturbing black bass, walleye, trout, lake trout or salmon on spawning beds, or taking milt from such spawning beds, is strictly prohibited.

(11) It shall be unlawful to catch, kill, or possess more than one day's limit, however, a Person may possess two day's limit while traveling to his/her residence from an overnight fishing trip of two or more consecutive days.

D. Ice Fishing.

(1) Ice Fishing is permitted from November 15th to April 30th for species for which there is no closed season and has no minimum length.

(2) Ice Fishing is permitted from November 15th to March 15th for Northern Pike, Pickerel, Tiger Muskellunge, Walleye, and any other species during open season.

(3) Use of a gaff hook is permitted for Ice Fishing only.

(4) The Ice Fishing hole is limited to eight (8) inches, with only two (2) single points per line.

(5) The angler must be in immediate attendance when his/her lines are in the water. No lines may be left unattended at any time.

(6) One angler may operate no more than nine (9) points.

(7) Each angler shall leave the area he/she has used to ice fish, as it was found by him/her. Should the angler leave litter or debris, he/she shall be subject to citation, fine and confiscation of equipment.

E. Violations.

(1) It shall be unlawful for a Non-Member or Non-Indian to fish or attempt to fish in Nation Waters without a valid Seneca Nation Fishing License in his/her possession.

(2) It shall be unlawful to for any Person to assist a Non-Member or Non-Indian to fish or attempt to fish in Nation Waters without a valid Seneca Nation of Indians Fishing License in his/her possession.

(3) It shall be unlawful to conduct an organized fishing tournament within Nation Lands or Nation Waters without a special Tournament Permit issued by the Seneca Nation of Indians.

(4) It shall be unlawful to operate a Fishing Guide Service without a proper business permit issued by the Seneca Nation of Indians.

CHAPTER V. TRAPPING

A. No Licenses. In keeping with custom and tradition, the Seneca Nation of Indians declines to issue trapping licenses to Non-Indians or Non-Members

B. Only Members shall trap on Nation Lands.

CHAPTER VI. REMEDIES

A. The Seneca Nation of Indians may bring an action in its Courts against any Person for violation of this Law. The action shall be initiated by issuance of a citation by a Law Enforcement Officer. Any Person found in violation of any provisions of this Law may be sentenced by the Peacemakers Court as follows:

(1) First Offense: Fine of up to \$100.00

(2) Second Offense:

(a) Fine of up to \$500.00, and

(b) Permanent confiscation of fishing equipment or other equipment utilized in the commission of the violation.

(3) Third Offense:

(a) Fine of up to \$1,000.00, and

(b) Permanent confiscation of fishing equipment or other equipment utilized in the commission of the violation, and

(c) Permanent loss of fishing privileges if any of the offenses have been fishing violations. The Court shall notify the Clerk in the event that an individual has been permanently denied fishing privileges.

(d) The President of the Seneca Nation of Indians may banish a violator of this Law from Nation Lands and Nation Waters who has been convicted of his/her third offense.

B. Any Person found to have violated the provisions of this Law shall pay Court costs, in addition to any fines, expenses for storage of equipment, vehicles, boats or watercraft, and any other expenses incurred by the Seneca Nation of Indians.

C. Law Enforcement Officers are hereby authorized to seize and confiscate any equipment, vehicles, boats and watercraft used in the commission of any violation of this Law.

(1) The Nation shall store the impounded items or have the impounded items stored at owner's expense until further order of the Court.

(2) Notice of the seizure and a date for the Court to determine the disposition of the impounded items shall be served upon the defendant simultaneously with the citation.

(3) The defendant from whom the items were seized may, at the Courts discretion, have the opportunity to redeem the impounded items by paying to the Court the maximum possible fine, including court costs, which could be incurred for said violation that the Court shall hold pending final judgment.

D. Upon final judgment, the Court shall dispose of such monies paid into the Court by first paying to the Nation all or such part of the monies that may be necessary to satisfy the judgment as entered, and thereafter remitting any excess to the defendant.

(1) If the seized items shall not be redeemed, and the defendant does not satisfy the judgment as entered within five (5) days of its entry, the Court shall conduct a public auction of the seized items upon two (2) weeks public notice and shall dispose of the proceeds from the auction in accordance with the provisions of this Section, provided that the defendant shall be liable to the Nation for any deficiency between the proceeds from the auction and the amount of judgment.

(2) The Court may, in its discretion, order that the seized items be returned to the defendant if the judgment entered is satisfied within five (5) days of its entry.

All laws are subject to change with approval from the Seneca Nation of Indians Tribal Council.

ENVIROMENTAL PROTECTION DEPARTMENT
SENECA NATION PESTICIDE ORDINANCE REVISION
REGULAR SESSION OF COUNCIL
APRIL 13, 2013
PAGE 2

WHEREAS, the intent of these specific revisions is to allow the Seneca Nation to protect the sensitive Source Water Protection Area of the Seneca Territory, the aquifer that current and/or future wells draw or may draw from, and land surrounding the source water protection area.

NOW, THEREFORE, BE IT

RESOLVED, the Seneca Nation Tribal Council hereby accepts the proposed revisions to the Seneca Nation Pesticide Ordinance as written,

AND BE IT FURTHER RESOLVED that the proposed revisions from this date forward will heretofore be in effect as an element of the Seneca Nation Pesticide Ordinance, by authorization of the Seneca Nation Council.

ALL IN FAVOR

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on April 13, 2013 on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Administration Building, on the Cattaraugus Territory, on the 22nd day of April, 2013.

ATTEST:

{ S E A L }


GERALDINE HUFF, CLERK
SENECA NATION OF INDIANS

Seneca Nation of Indians

President - Barry E. Snyder, Sr.
Clerk - Lenith Waterman

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-6272



Treasurer - Jacqueline Bowen

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-1565

AT THE REGULAR SESSION OF COUNCIL OF THE
SENECA NATION OF INDIANS HELD ON JUNE 12,
2010, AT THE SENECA ALLEGANY
ADMINISTRATION BUILDING ON THE ALLEGANY
INDIAN TERRITORY, SALAMANCA, NEW YORK
14779

CN: R-06-12-10-18

EXECUTIVES PRESENT:

PRESIDENT	-	BARRY E. SNYDER, SR.
CLERK	-	LENITH K. WATERMAN
TREASURER	-	JACQUELINE L. BOWEN

TO ENACT THE SENECA NATION OF INDIANS PESTICIDE ORDINANCE/ APPROVAL

MOTION: by Donald John, seconded by Linda Doxtator, that the Nation's Council approves the following:

WHEREAS, the Nation has the inherent and treaty-protected sovereign right to the free use and enjoyment of its lands; and

WHEREAS, the Nation desires to ensure that all individuals who apply pesticides for commercial purposes, do so in a manner that is protective of the lands of the Nation and the general health and welfare of the community; and

WHEREAS, it is necessary to regulate the activities of commercial pesticide applicators so as to achieve these objectives.

NOW, THEREFORE BE IT

RESOLVED, that the Council hereby enacts the Seneca Nation of Indians Pesticide Ordinance in the form attached hereto.

ALL IN FAVOR

MOTION CARRIED

- F. **Clerk**: means the Clerk of the Seneca Nation of Indians, or other agents authorized by the Clerk to carry out the functions of the Clerk as described in this Ordinance.
- G. **Certification**: means approval by the Nation's EPD or by an outside State or Federal agency that a person is competent and has completed an adequate form of pesticide training for the specific application of a pesticide in a given category.
- H. **Certified Applicator**: means an individual who is certified to use or supervise the use of any pesticide in any category of use covered of use by their certification.
- I. **Commercial Application**: means application of any pesticide for any purpose on any property other than as provided by the definition of "Private Application of Pesticides."
- J. **Commercial Applicator**: means a Certified Applicator that uses or supervises the use of any pesticide for any purpose on any property other than as provided by the definition of "Private Applicator."
- K. **Competent**: means properly qualified to perform functions associated with pesticide application; the degree of capability required being directly related to the nature of activity and associated responsibility.
- L. **Conservation**: means the Seneca Nation Conservation Department and its Officers.
- M. **Contamination**: means the presence of a pesticide or pesticides, in or on areas other than the target area, which may or may not be injurious to man or the environment, or improper or harmful application within the target area.
- N. **EPD**: means Seneca Nation Environmental Protection Department.
- O. **Forest**: means a concentration of trees and related vegetation in non-urban areas, in which human use is infrequent or sparse; characterized by natural terrain and drainage patterns.
- P. **FIFRA**: means Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §136 *et. seq.*, as it may be amended from time to time.
- Q. **Ground Equipment**: means any machine or device (other than aircraft) for use on land or water, designed for, or adaptable to use in applying pesticides as a spray, dust, aerosol, or any other form.
- R. **Hazard**: means probability that a given pesticide will have an adverse effect on the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number interrelated factors present at any given time.
- S. **Metabolite**: means any substance produced in or by living organisms by biological processes and derived from pesticide.

- T. **MSDS**: means the specific designated label given to a pesticide by the U.S. Environmental Protection Agency including brand, trade, and product names, classification, ingredient statement, chemical name, common name, type of pesticide, net contents, name and address of manufacturer, registration and establishment numbers, signal words and symbols, precautionary statements, route of entry statements, specific action statements, hazards to wildlife, protective clothing and equipment statements, environmental hazards, specific toxicity statements, general environmental statements, physical or chemical hazards, entry restriction, storage and disposal, directions for use.
- U. **Nation**: means The Seneca Nation of Indians.
- V. **Non Target organism**: means a plant or animal other than the one pesticide is meant to control.
- W. **Ornamental**: means trees, shrubs, and other plantings, grown primarily for beauty in and around habitations, generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.
- X. **Peacemaker's Court**: means the Court of general jurisdiction established by the Constitution of the Seneca Nation of Indians, as it may be amended from time to time.
- Y. **Persistence**: means that the pesticide or its metabolite remains at or near the point of application for more than one year.
- Z. **Person**: means any individual, public or private corporation, political subdivision, government agency, department or bureau of the Nation, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.
- AA. **Pesticide**: means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigation any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animal, which EPD shall declare to be a pest. And any substance or mixture of substances intended as a plant regulator, defoliant or desiccant.
- BB. **Private Dwelling**: means any building or structure designed and occupied exclusively for residence purposes by not more than two families.
- CC. **Territories**: means the Cattaraugus, Allegany, Buffalo Creek, Niagara Falls and Oil Springs Territories of the Seneca Nation of Indians, and such other lands as the Nation may from time to time acquire and hold in restricted fee status.
- DD. **Three Rinse Technique**: means that after normal emptying, the container is allowed to drain in a vertical position for 30 seconds. The container rinsed

three times with water, allowing 30 seconds to drain after each rinse. Rinse material should be measurable. One quart for each gallon container, one gallon for each five gallon container, and five gallon for 33 or 50 gallon container for each rinse. Drain each into the spray tank before refilling it to the desired level or drain into suitable containers for use as a dilute for formulations of the same pesticide.

EE. **Under the Direct Supervision:** means the act or process whereby the application of a pesticide is performed by someone other than a Certified Applicator, unless otherwise prescribed by its labeling, so long as the Certified Applicator is responsible for actions of that other person and who is available if and when needed, even though such Certified Applicator is not physically present at the time and place of application, but is at a reasonable distance from the application site and may be easily contacted.

Article 2: Pesticides Use Permits

1. Requirements:

- a) Except as set forth in Subsection B, any person engaged in the Commercial application of Pesticides on land within the boundaries of the Seneca Nation of Indians Territories shall process a valid Pesticide Use Permit, as provided for herein, issued by the Clerk of the Seneca Nation of Indians.
- b) A Pesticide Use permit shall not be required of:
 1. An individual who is applying non restricted pesticides by use of hand or ground equipment for him/herself, on his or her own property or premises, provided such property or premises are not larger than a private dwelling and related structures and adjacent areas and who does not use and apply such pesticides to produce a significant part of any gainful employment or livelihood, or
 2. An individual who is applying pesticides under direct supervision of a Certified Applicator who possesses a valid Pesticides Use Permit issued by the Seneca nation Indians, or
 3. An individual who is applying antimicrobial agents, except where such pesticides have been classified for restricted use under Nation law.
- c) No Certified Applicator shall engage in the application of Pesticides in any categories not specified on a valid Pesticide Use Permit.

- d) The Seneca Nation of Indians EPD shall have the ultimate authority to conduct all aspects of monitoring and permit issuance as necessary, and recommend or deny the issuance of a Pesticide Use Permit to the Clerk of the Seneca Nation of Indians.
- e) Absolutely no application of any pesticide, including non-restricted pesticides, will be permitted or allowed within the Source Water Protection Area, as defined by the map attached as Appendix One "Source Water Protection Area – Area of Availability for Law" and made a part of this Code.

2. Pesticide Use Permit Conditions.

- a) The Seneca Nation Pesticide Use Permit shall be valid for a period of one calendar year from the date of issue, unless earlier suspended, revoked or otherwise modified by the Seneca Nation of Indians in accordance with the provisions of this Ordinance.
- b) The fee for each annual Pesticide Use Permit shall be \$150.00. The Seneca Nation or Commercial Applicators applying pesticides for the benefit of, and under contract with the Seneca Nation of Indians, shall be exempt from payment of this fee.
- c) Each applicant applying for a Seneca Nation of Indians Pesticide Use Permit shall possess a valid commercial applicator certificate, issued by a EPD approved pesticide certification program, and may only be issued a permit to apply pesticides in categories that such certificates are valid for, and each application shall apply to the employees of the applicant that will apply pesticides under the Pesticide Use Permit.
- d) Applicants for a Pesticide Use Permit shall carry a minimum of \$300,000.00 property damage insurance or a surety bond of comparable value in a form acceptable to the Seneca Nation of Indians as proof of financial responsibility.
- e) Each applicant for a Pesticide Use Permit, shall possess a valid business registration issued in accordance with any Federally recognized authority in the issuance of such permits, and must assign at least one Certified Commercial Applicator to each project undertaken within the boundaries of the Nation's Territories.
- f) Applications for a Pesticide Use Permit must be filed each year with the Clerk of the Seneca Nation of Indians. Such filing must be made 30 days prior to the pesticide application for which the permit is required.
- g) An applicant, who is issued a Pesticide Use Permit, must, as a condition of such permit, accept the Jurisdiction of the Seneca Nation

of Indians in all matters arising out of this ordinance and must adhere to and obey all Laws, Regulations and Ordinances of the Nation while performing their business on Nation Territory.

3. Content of Applications for a Seneca Nation of Indians Pesticide Use Permit.

- a) Application for Pesticide Use Permit shall be filed with the Nation's Business Permitting Office, for review by the Nation's EPD.
- b) Applications shall include:
 - 1. Name of Business/Private Applicators
 - 2. Copies of Certification for each person or employee to be applying pesticides under the Pesticide Use Permit.
 - 3. List of Certified Applicators to be used and for what projects each applicator will be responsible for.
 - 4. Brief description of type of application, anticipated areas, and acre amounts of application, anticipated pesticides to be used, quantity of pesticides to be used, equipment type used in application.
 - 5. Brief statement detailing method and place of pesticide mixture, removal of unused pesticides, and or pesticide containers from the Seneca Nation of Indians Territories.
 - 6. Applicant shall provide a copy of their Valid State Pesticide Business registration certificates along with certificate and license numbers of vehicles that will be used to transport Pesticides to and from the nation's Territories.
- c) Applications for renewed Pesticide Use permits must fulfill same application requirements as required for a new Permit.
- d) Prior to any actual application of pesticides, applicant must meet provisions set forth in Article 3, Section 5 and of this Ordinance.
- e) Upon submission of a complete application package, the Nation's Business Permitting office shall forward the application to the Nation's EPD for their review. EPD shall review the application and return it to the Nation's Clerk within fifteen (15) days, along with written recommendation to approve or deny the permit.
- f) Modification: it shall be the responsibility of the permittee to notify the Seneca Nation EPD with respect to any modifications to any requirement set forth in this Ordinance, and EPD shall have final say in approval of such modifications to Permitted Pesticide Use Permit. The Clerk of the Seneca Nation of Indians may modify any Pesticide Use Permit free of charge as long as modification has been approved

by EPD. Requests for modification must be made (10) days prior to any application of pesticides.

4. Denial of a Seneca Nation Pesticide Use Permit: A Pesticide Use permit may be denied by EPD for reasons including but not limited to the following:
 - a) The applicant or business is unable to demonstrate that he/she meets the conditions set forth in this Ordinance.
 - b) The applicant or Business fails to provide information required by this ordinance.
 - c) The applicant has been convicted of or pled guilty to a felony under State or Federal law.
 - d) The Applicant or business previous' pesticide use permit has been suspended by EPD, a Conservation Officers, the Peacemakers' Court, or a marshal, until such time as same removes suspension.
 - e) Any statement in the application is false or misleading.
 - f) The applicant or business has been found to engage in fraudulent practices in the application of pesticides.
 - g) The applicant seeks a permit to apply pesticides within the Source Water Protection Area, as defined by the map attached as Appendix One "Source Water Protection Area – Area of applicability for Law."

In the event of denial of a Pesticide Use Permit the Clerk of the Seneca Nation of Indians will notify applicant in writing of such denial, grounds for denial, and procedures for appeal.

- h) Denial of a Pesticide Use Permit application may be appealed through an Administrative Hearing Conducted by the Natural Resource Committee. The hearing will be granted not more than ten days after written request of the aggrieved applicant. If there is a disagreement as to the results of the said hearing, applicant may submit a petition to the Peacemakers' Court of the Seneca Nation of Indians in accordance with the Nation's Rules of Civil Procedure.
 - i) Denial of a Pesticide Use Permit pursuant to Section 4(G) of this Article shall not be appealable.

Article 3: General Provisions

1. The Council of the Seneca Nation reserves the right to prohibit or to limit the use of any pesticide within the boundaries of the Territories, regardless of the pesticide's accepted usage elsewhere.

2. Restrictions on the use of pesticides.
 - a) Pesticides shall be used in a manner and under such wind and other conditions as to prevent Contamination of crops, property, structures, lands, pasturage, or waters, and wetlands as to not allow Pesticides to move off target application areas as approved by EPD.
 - b) Any Pesticides used must be registered by the U.S. Environmental Protection Agency including restricted used or non-restricted use Pesticides.
 - c) Any pesticides accepted for use by SNI EPD must be used in accordance with all recommendations found on the product MSDS Label as to, use, safety, methods of application, rates, restrictions, requirements, re-entry intervals, worker protection standards, signage, and any other recommended by label or EPD.
 - d) All equipment containing Pesticides and used for drawing water for use of pesticides shall be equipped with an effective device designed to prevent backflow.
3. Cleaning and disposal by Certified Applicators of pesticide containers and disposal of unwanted or unused pesticides.
 - a) Empty non-combustible pesticide containers shall be cleansed before disposal, using the Three Rinse Technique, except that containers of ready to use Pesticides that do not require dilution must be drained only for one 30 second period.
 - b) Any and all pesticide containers may not be burned, buried, abandoned or otherwise disposed of on lands within the boundaries of the Nation's Territories.
 - c) Unwanted or unused pesticides in any quantity, dry or liquid, may not be burned, buried or otherwise disposed of on lands within the boundaries of the Nation's Territories.
 - d) It shall be the Permitted Certified Applicators responsibility to properly dispose of any and all empty, unwanted or unused pesticides in any form, and pesticide containers away from Seneca Nation of Indians Territories.
 - e) No containers cleaned or unclean that held any pesticide or were used in the mixing of any pesticide will be permitted for reuse for anything other than mixing of same labeled pesticides within the boundaries of the Seneca Nation of Indians Reservations.
4. Protection of individuals applying or otherwise handling pesticides.
 - a) It shall be the responsibility of each Certified Applicator to acquaint those working under his/her direct supervision with the hazards

involved in handling pesticides and to instruct such employees in the precautions to avoid such hazards.

- b) It shall be the responsibility of each Certified Applicator to provide for the protection of employees, working under his/her direct supervision, the necessary safety equipment and protective clothing as set forth on the SNI EPD approved pesticide MSDS label.
- c) It shall be the responsibility of the Certified Applicator to inform those working under his/her direct supervision of any appropriate field re-entry requirements and to follow recommendations found on the SNI EPD approved MSDS pesticide label, as to re-entry intervals, safety requirements, signage, decontamination sites, residential notice, any other recommendations on label or directed by SNI EPD.

5. Protection of Community Members that will be affected by Pesticide Use.

- a) It shall be the responsibility of each person wishing to apply pesticides on Nation Territory to submit a copy of a Certified Applicator's certification to the EPD
- b) It shall be the responsibility of each person to notify the SNI EPD (15) days in advance of the intent to use pesticides and provide; exact MSDS label of each pesticide being used, location of application, method of application, rate of application, list of assigned and SNI EPD Certified Applicators to oversee application. The SNI EPD shall be the authorized SNI agent in reviewing and certifying any pesticide, method of application, rate, and area of application, certification requirements, and overall use and restrictions of use, all requirements of use for all pesticide applications that occur within the boundaries of the Seneca Nation of Indians Territories.
- c) In its review of an application to apply pesticides, the SNI EPD may request to also review maps of any or all areas of application, and any other information it may deem necessary to approve or deny a pesticide application.
- d) The SNI EPD may also require any additional measures not listed on the approved pesticide MSDS Label in its review and approval of a pesticide application.
- e) An annual pesticide use report will be required to be submitted to the Seneca Nation of Indians EPD within 30 days after the last application of pesticides has been completed under the calendar year of the issued Pesticide Use Permit. The report must include: date, time and location of applications, area and acres of application, rates and methods of

application, pesticides and amounts used, reason and target for application.

6. Notification of intent of Aerial Application of Pesticides.

- a) In the event that aerial application of pesticides is requested, the same (15) day advance notification, material and methods of article 2 section 5 will apply, and in addition a (3) day grace window will be in effect for inclement weather. If that (3) day window is not met, a new request will be required. The SNI EPD shall be the authorized agent in the Review and approval of any and all aerial application of any pesticide within the boundaries of the Seneca Nation of Indian's Territories.

Article 4: Enforcement

1. Suspension of the Seneca Nation Pesticide Use Permit.

- a) The Seneca Nation of Indians EPD, Conservation Officers, or Business Permitting Office may suspend a Pesticide Use Permit for a period not to exceed (90) days, for reasons including but not limited to the following:
1. The permit holder's Certifications or business registrations have expired and has failed to show that such certifications or registrations have been renewed.
 2. The permit holder has failed to comply with the provisions set forth in this Ordinance.
 3. The permit holder has been issued a summons by EPD, a Conservation Officer or Marshall for a violation of this Ordinance.
 4. Any statement in the application which a permit was issued is or was false or misleading.
 5. The permit holder has been convicted of a felony under State or Federal Law.
 6. A present employee of the permit holder, or a former employee in course of such employment, applied or used any pesticide contrary to the registered MSDS label or set modifications previously approved or sanctioned by SNI EPD.
 7. The permit holder has been found to have engaged in fraudulent business in the application of pesticides.
 8. The permit holder, or any present or past employee in the course of employment, has failed to comply with any portion of

this Ordinance and/or any Ordinance, law, or rules and regulations within the Seneca Nation of Indians Territories.

9. The permit holder has falsified any records or reports, or has failed to maintain such records or reports as required by this Ordinance.

10. The permit holder, or any present or former employee in the course of such employment, has been convicted of or pled guilty to a criminal violation under Section 14b of FIFRA, or has been made subject to a final order imposing civil penalty under Section 14A of FIFRA.

11. The permit holder has had its pesticide certification or registration certificates revoked or modified by any regulatory agency.

b) The Clerk of the Seneca Nation of Indians shall notify the permit holder in writing of the suspension, the grounds for suspension, and the procedures for appeal as outlined in this Ordinance.

2. Revocation of a Seneca Nation of Indians Pesticide Use Permit.

a) A Seneca Nation of Indians Pesticide Use Permit may be revoked by the Nation's Clerk, EPD, or Peacemakers Court, for any violation set forth in this Ordinance.

b) A Seneca Nation of Indians Pesticide Use Permit may be revoked or a renewed permit denial for failure to submit Pesticide Use Report as defined in Article 3 section 5(E) of this Ordinance.

3. Identification, Permit review, equipment Inspection.

a) Each Certified Applicator or Pesticide Permit holder must make readily available to EPD, Nation Conservation Officers, and Marshalls the following: (i) a copy of a valid Pesticide Use permit issued by the Seneca Nation of Indians Clerk, (ii) a copy of an EPD approved certified applicator certificate, (iii) an additional form of picture identification, (iv) copy of registration to do business as a pesticide company, and (v) any other require materials as outlined in this Ordinance.

b) At any time prior to, during, or after an application is submitted the Nation's EPD, an EPD representative may inspect any equipment, device or apparatus used for application of Pesticides as permitted in the Pesticide Use Permit, and may require repairs or other changes before approval is given for further use of such equipment. In the event that such equipment may be deemed inappropriate or in

sufficient for such application EPD may halt pesticide application until such satisfactory equipment is furnished for approved application.

4. Violations and Remedies.

- a) The Seneca Nation of Indians may bring an action in the Courts against any person for violation of this Ordinance. The action shall be initiated by issuance of a citation by Law Enforcement Officer(s) or the Director of the SNI EPD. Any person found in violation of any provisions of this Ordinance shall be sentenced by the Peacemakers Court as follows:
 - a. First Offense - Fine of up to \$250.00 plus Court costs.
 - b. Second Offense – Fine of up to \$1,000.00 plus Court costs.
 - c. Third Offense – Fine of up to \$2,500.00 plus Court costs; impoundment of equipment and the individual(s) shall be prohibited from obtaining a Pesticide Use Permit under this Ordinance for a period of up to ten (10) years. The Court shall notify the Clerk in the event that a person has been deemed ineligible to apply for a permit under this Ordinance.
- b) Any person found to have violated the provisions of this Ordinance shall pay Court costs, in addition to any fines, expenses for storage of equipment or vehicles, and any other expenses incurred by the Seneca Nation of Indians.
- c) Law Enforcement Officers and EPD Director are hereby authorized to impound and equipment or vehicles used in the course of committing a violation of this Ordinance. In the event that equipment or vehicles are impounded, the Nation Law Enforcement Officers or EPD Director shall prepare an inventory of items impounded, which shall be verified and counter-signed by the person alleged to have violated the provisions of this Ordinance. The Nation shall store the impounded items or have the impounded items stored at person's expense until further order of the Court.
- d) Notice of the seizure and a date for the Court to determine the disposition of the impounded items shall be served upon the defendant, simultaneously with the citation. The defendant from whom the items were seized may, at the Courts discretion, have the opportunity to redeem the impounded items by paying to the Court the maximum possible fine (to include court costs) that could be incurred for said violation, which the Court shall hold, pending final judgment.

e) Upon final judgment, the Court shall dispose of such monies paid into the Court pursuant to Section 3 above, by paying to the Nation all or such part of the monies that may be necessary to satisfy the judgment as entered, and thereafter remitting any excess to the defendant. If the seized items shall not be redeemed pursuant to Subsection C above, and the defendant does not satisfy the judgment as entered within thirty (30) days after the period for appealing a final order has expired, the Court shall conduct a public auction of the seized items upon two (2) weeks public notice and shall dispose of the proceeds from the auction in accordance with provisions of this Section, provided that the defendant shall be liable to the Nation for any deficiency between the proceeds from the auction and the amount of judgment. Any property impounded in accordance with the Section shall be returned to the defendant within a reasonable period of time after the satisfaction of said judgment.

5. Orders to Law Enforcement.

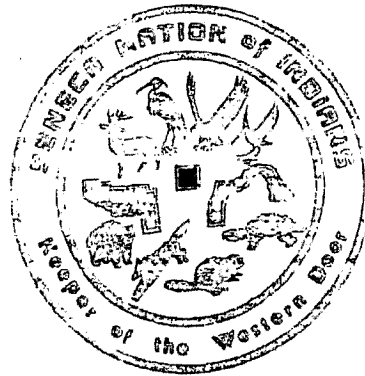
The Director of the Nation's Environmental Protection Department, Nation Conservation Officers, Marshalls and the Nation's Business Permitting Officer are hereby expressly authorized and directed to enforce the provisions of this Ordinance, as well as any Court orders issued hereunder.

Seneca Nation of Indians

President - Barry E. Snyder, Sr.
Clerk - Geraldine Huff

12837 ROUTE 438
IRVING, NEW YORK 14081

Tel. (716) 532-4900
FAX (716) 532-9132



Treasurer - Maurice A. John

P.O. BOX 231
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790
FAX (716) 945-0150

AT THE REGULAR SESSION OF COUNCIL OF THE
SENECA NATION OF INDIANS HELD ON JUNE 11,
2005, AT THE WILLIAM SENECA BUILDING ON
THE CATTARAUGUS TERRITORY, IRVING, NY
14081

CN: R-06-24-05-08

EXECUTIVES PRESENT:	PRESIDENT	-	BARRY E. SNYDER, SR.
	CLERK	-	GERALDINE HUFF
	TREASURER	-	MAURICE A. JOHN

NATURAL RESOURCE COMMITTEE / SAND & GRAVEL LAW

Motion by Donald John, Seconded by Todd Gates that Tribal Council approves the following resolution:

WHEREAS, the Seneca Nation of Indians has established the Natural Resources Committee whose principle goal is to oversee the uses and concerns of all Natural Resources on Seneca Nation Territories and,

WHEREAS, it is the mission of the Natural Resource Committee to continue developing a sound environmental infrastructure in order to maintain a habitable and sustainable future for our communities;

NOW, THEREFORE BE IT RESOLVED, that the Seneca Nation Tribal Council authorizes the following changes to the Sand and Gravel By-laws:

1. A buffer zone is put into place on all sand and gravel operations that dig near or around the surface (lakes, ponds, streams, creeks, rivers, etc.) The buffer zone will be twenty-five (25) feet from all water sources.
2. A buffer zone be put into place on all sand and gravel operations, which dig near or around boundary or property lines. The buffer zone will be twenty-five (25) feet from the owners property or boundary lines.

ALL IN FAVOR

MOTION CARRIED

NATURAL RESOURCES COMMITTEE / SAND & GRAVEL LAW
SPECIAL SESSION OF COUNCIL
JUNE 23, 2005
PAGE 2

CERTIFICATION

I hereby certify the forgoing extract is a true and correct copy from the minutes of the Special Session of Council of the Seneca Nation of Indians held on June 23, 2005, on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Building, on the Cattaraugus Territory, on the 24th day of June 2005.

ATTEST:

{ S E A L }



GERALDINE HUFF, CLERK
SENECA NATION OF INDIANS

President - Duane J. Ray
Clerk - Norma Kennedy



Treasurer - J. Conrad Seneca

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AT THE REGULAR SESSION OF COUNCIL OF THE
SENECA NATION OF INDIANS, HELD ON MAY 8,
1999, AT THE G. R. PLUMMER BUILDING ON
THE ALLEGANY INDIAN RESERVATION,
SALAMANCA, NEW YORK, 14779

EXECUTIVES PRESENT:

PRESIDENT	-	DUANE J. RAY
CLERK	-	NORMA J. KENNEDY
TREASURER	-	J. CONRAD SENECA

SAND & GRAVEL LAW/APPROVAL

MOTION: by Lanny Bennett, seconded by Richard E. Nephew, that the Tribal Council approves the Sand & Gravel Law, as presented by Lana Watt.

1-Abstained

MOTION CARRIED

CERTIFICATION

I hereby certify that the foregoing extract is a true and correct copy from the Minutes of the Regular Session of Council of the Seneca Nation of Indians held on May 8, 1999, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and cause the seal to be affixed at the Genevieve Plummer Administration Building on the Allegany Indian Reservation, Salamanca, New York, on the 12th day of May, 1999.

ATTEST:

Norma Kennedy
NORMA KENNEDY, CLERK
THE SENECA NATION OF INDIANS

(S E A L)

**SENECA NATION OF INDIANS
PERMIT APPLICATION
MINED LAND-USE PLAN CHECKLIST**

Your application must include an application form, organization report (in triplicate), Environmental Assessment Form, and a mined land-use plan (in quadruplicate).

The mined land-use plan consists of four parts:

- 1) mining plan - graphic portion
- 2) mining plan - written portion
- 3) reclamation plan - graphic portion
- 4) reclamation plan - written portion

Mining Plan - Graphic Portion must show:

- a) accurate geographic location of the mine
- b) location of adjacent topographic, cultural and land-use features
- c) outline of the land to be affected through each permit term and through the Life of the Mine
- d) location of size of the following elements of mining:
 1. cuts and excavations
 2. areas of mineral preparation and processing
 3. haulageways
 4. areas of mineral, refuse and spoil storage
 5. repair and shipping areas
 6. drainage and water control features
 7. screening (noise and/or visual barriers)
- e) distances and bearings to the nearest residences and to all property lines from the Life of Mine limits

Requirements **a**, **b** and **c** should be located on the appropriate U.S.G.S. Quadrangle, NYS DOT Quadrangle, or County Highway Map. Air photos, enlarged quadrangles, or original maps are acceptable to satisfy requirements **c** and **d**, provided that the scale does not exceed one inch equals 660 feet.

Mining Plan - Written Portion must show:

- a) description of the affected land indicating the present use of the land
- b) description of proposed or existing mine indicating if the operation is a surface consolidated, surface unconsolidated, or underground mine
description of mining method indicating:
 1. extraction method



SENECA NATION OF INDIANS Environmental Protection Department Sand & Gravel Permit Application

FOR OFFICIAL SNI USE ONLY SNI #

NED LAND FILE NUMBER (if assigned) 2. TELEPHONE #

3. NAME OF APPLICANT

4. PERMANENT ADDRESS

CITY STATE ZIP CODE

5. CONTACT PERSON 6. TELEPHONE #

8. TAXPAYER I.D. 9. APPLICATION TYPE

10. a. PRESENT PERMIT TERM b. COMING PERMIT TERM

12. SNI ORDINANCES

7. MINED LAND PROJECT a. Will the total acreage affected by mining for the entire mining site exceed 5 acres? YES NO b. Will the vertical depth from the top of the mine face to the floor exceed 20 feet? YES NO c. Will there be on-site processing of mining products (eg. crushing, screening, washing)? YES NO d. Will mining occur within 100 feet of a surface water body (eg. stream, lake) or wetland area? YES NO e. Will any consolidated minerals be mined (eg. limestone, trap rock, sandstone)? YES NO f. Will mining occur within 500' of any dwelling? YES NO g. Will mining ever occur at or below the mean high water table? YES NO

11. COMMON GEOLOGIC NAME OF MINERAL TO BE MINED

13. ARE ANY OTHER SNI MINING PERMITS CURRENTLY HELD BY THE APPLICANT? YES NO (If yes, give #)

14. Has any owner, partner corporate officer or corporate director of your organization ever held any of these positions in another organization that has had a SNI mining permit SUSPENDED OR REVOKED or has had a SNI mined land reclamation bond FORFEITED? YES NO IF YES, IDENTIFY THE PERSON(S).

15. ACREAGE SUMMARY (To be filled in by applicant) a. Total acreage controlled by owner at this location _____ acres b. Total acreage affected since _____, 19____ _____ acres c. Total acreage approved by SNI as reclaimed since _____, 19____ _____ acres d. Current affected acreage (c minus d) _____ acres e. Acreage included in this application, but not previously approved _____ acres f. New acreage to be affected during the coming permit term _____ acres g. Number of acres to be reclaimed during coming permit term _____ acres

FOR OFFICIAL SNI USE ONLY _____ acres _____ acres _____ acres _____ acres _____ acres _____ acres _____ acres

16. NAME OF MINING SITE

17. MINE LOCATION Road _____ Nearest Road Intersection _____ Town _____ County _____

18. MAP LOCATION a. Reservation _____ b. Notes & Bounds _____ FOR OFFICIAL SNI USE ONLY

18. NAME AND ADDRESS OF SURFACE LANDOWNER

20. I am the owner of the property that is to be mined by the above applicant. I have read the contents of the Mined Land Use Plan, which sets forth the applicant's mining and reclamation plan for the property to be mined, and I hereby irrevocably consent and agree to the performance of the Mined Land Use Plan by the applicant, his surety or insurer or the Natural Resource Department. I further agree to allow access to the property to department personnel for the purpose of conducting inspections or investigations in the regular course of their duties.

SIGNATURE OF OWNER: DATE:

21. I hereby affirm, under penalty of perjury that information provided on this form is true to the best of my knowledge and belief. False statements made hereon are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

TITLE AND SIGNATURE OF APPLICANT OR AUTHORIZED REPRESENTATIVE DATE

SIGNATURE OF CONTRACTOR: DATE:

SENECA NATION OF INDIANS Sand & Gravel Permit Law

ARTICLE I. GENERAL PROVISIONS

Section 101. Purpose.

The purpose of this law is to set forth (i) the structure of the legislative committee and executive department responsible for the management of sand and gravel within the Seneca Nation of Indians, (ii) the policies and procedures governing the Nation's sand and gravel, and (iii) the terms and conditions under which such sand and gravel may be mined.

Section 102. Definitions.

For purposes of this law, the term-

(A) "Abandoned" shall mean the cessation of mining and reclamation activities on land affected by mining without prior notification to the Nation of such cessation of activities or without describing such cessation in a mined land-use plan approved by the Nation, and after opportunity to be heard;

(B) "Affected land" and "land affected by mining" shall mean the sum of that surface area of land or land under which water which: (i) has been disturbed by mining since April 1, 1975 and not been reclaimed, and (ii) is to be disturbed by mining during the term of the permit to mine;

(C) "Allotment" shall mean the right of a Nation member, conferred or recognized expressly by Nation law, custom, tradition or usage, entitling that member to the use of a surface interest in Nation lands;

(D) "Applicant" shall mean that person making application to the Nation for a mining permit;

(E) "Clerk" shall mean the Clerk of the Nation established under Section VI of the Nation Constitution of 1848, as amended;

(F) "Common Lands" shall mean an unallotted surface interest in Nation lands that is retained and used by the Nation;

(G) "Contractor" shall mean a person or entity who is granted permission by the Nation to remove sand and gravel from an allotment pursuant to a prior agreement entered into with a owner;

(H) "Council" shall mean the Tribal Council of the Nation established under Section I of the Nation Constitution of 1848, as amended;

(I) "Committee" shall mean the Nation Natural Resources Committee;

(J) "Haulageway" shall mean all roads utilized for mining purposes, together with that area of land over which material is transported, that are located within the permitted area;

(K) "Member" shall mean an individual who is an enrolled member of the Nation;

(L) "Mine" shall mean any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine;

(M) "Mined land-use plan" shall mean a document, consisting of a mining plan and a reclamation plan, which describes proposals for conduct of the applicant's mining operation and reclamation of the land to be mined to achieve the purposes of this title;

(N) "Mineral" shall mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this title, peat and topsoil shall be considered minerals.

(O) "Mining" shall mean the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling, or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine

location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities;

(P) "Mining plan" shall mean a description of the applicant's mining operation which shall include maps, plans, written materials and other documents as required by the Nation;

(Q) "Nation" shall mean the Seneca Nation of Indians, a Sovereign Nation;

(R) "Nation lands" shall mean any lands now or hereafter owned in fee simple by the Nation and subject to a federal restriction upon alienation, including but not limited to, the Allegany, Cattaraugus and Oil Spring Reservations;

(S) "Overburden" shall mean all of the earth, vegetation and other materials which lie above or alongside a mineral deposit;

(T) "Owner" shall mean a Nation member holding an allotment pursuant to Nation law, custom, tradition or usage;

(U) "Owner/Operator" shall mean a landowner who is granted permission to remove sand and gravel from his/her allotment pursuant to his/her owned business enterprise;

(V) "Permittee" shall mean (i) a contractor under a standard sand and gravel permit, or (ii) an owner/operator under an owner/operator permit;

(W) "Person" shall mean either a member or a non-member, also, "People";

(X) "Person engaged in mining" shall mean a person who is subject to this title but who is mining without a mining permit issued by the Nation;

(Y) "Premises" shall mean the premise described in the permit;

(Z) "President" shall mean the President of the Nation established under Section III of the Nation Constitution of 1848, as amended;

(Aa) "Reclamation" shall mean the condition of the affected land to make it suitable for any uses or purposes consistent with the provisions of this title;

(Bb) "Reclamation plan" shall mean a description of operations to be performed by the applicant to reclaim the land to be mined over the life of the mine. The material and other documents as required by the Nation;

(Cc) "Sand and Gravel" shall mean any sand and gravel located within Nation lands;

(Dd) "Spoil" shall mean any waste material removed from its natural place in the process of mining and all waste material directly connected with the cleaning and preparation of any minerals;

(Ee) "Tailings" shall mean material of inferior quality or value resulting from the removal, preparation or processing of minerals; and

(Ff) "Treasurer" shall mean the Treasurer of the Nation established under Section VI of the Nation Constitution of 1848, as amended.

Section 103. Separability.

If any provision of this law or its application to any person or circumstances is held invalid, the remainder of the provisions of this law or the application of the provision to other persons or circumstances shall not be affected.

Section 104. Codification.

The provisions of this law may be codified so as to facilitate accessibility.

Section 105. Amendment.

No provision of these rules may be amended unless the Council shall have approved such amendment. It shall be the policy of the Council that prior to any action being taken on any proposed amendment, there shall be ample opportunity for public review and comment.

Section 106. Effective Date.

The effective date of this law shall be the date of enactment May 8, 1999.

ARTICLE II. NATURAL RESOURCES COMMITTEE

Section 201. Establishment.

There is hereby established a Natural Resources Committee.

Section 202. Powers.

The Committee shall have such power as may be necessary to perform the duties that may from time to time be defined by law.

ARTICLE III. SAND AND GRAVEL

Section 301. Sand and Gravel; Ownership.

In accordance with Nation law and custom, all minerals, including sand and gravel located within any Nation lands shall be and remain the sole and exclusive property of the Nation.

Section 302. Removal of Sand and Gravel; Authorization.

(A) No person shall extract or otherwise remove any sand and gravel from Nation lands without a permit issued by the Nation.

(B) The Nation may authorize the removal of sand and gravel from any Nation lands, provided, that such removal shall occur only (i) upon the consent of the owner of record, if any, and (ii) if not inconsistent with the lawful rights of any other person and (iii) if consistent with the provisions of this law.

Section 303. Stockpiling.

All sand and gravel not removed from the premises by the termination date of the permit shall remain the property of the Nation, and the permittee shall have no rights whatsoever with respect to the same.

Section 304. Applicability.

Unless explicitly stated to the contrary, this law shall apply to all future and existing sand and gravel permits that may be or have been issued.

ARTICLE IV. PERMITS

Section 401. Permits; Types.

(A) There shall be two types of sand and gravel permits, as follows:

(1) *Standard Sand and Gravel Permit.* An owner may enter into an agreement with a contractor for the removal of sand and gravel from his or her allotment, provided, that such agreement shall not be valid unless and until it has been approved by the Nation and a permit has been issued. Permit applications must comply with standard for permits under this law. If approved, said permit shall be issued upon receipt of five hundred dollars (\$500.00).

(2) *Owner/Operator Permit.* An owner may remove sand and gravel from his/her allotment upon approval by the Nation and the issuance of a permit. Permit applications must comply with standards for permits under this law. If approved, said permit shall be issued upon receipt of two hundred fifty dollars (\$250.00).

(B) Applicants for sand and gravel permits must use the Standard Seneca Nation Sand and Gravel Permit form attached to this law as Appendix A. Permits are non-transferable.

Section 402. Permits; Issuance; Term.

(A) The Committee shall review the application only after the Environmental Protection Department has certified the application is complete. The Committee shall review the application before submitting its recommendation to the Council. The Council shall approve or deny the permit based on the Committee's recommendation.

(B) A permit shall not be issued to a contractor or owner/operator if said person or organization, during the previous year, has been a party to a canceled permit or if any party to the permit is currently under suspension for a permit violation.

(C) A permit shall be valid for not longer than (i) five years in the case of a member contractor or owner/operator, or (ii) one year in the case of a non-member contractor or owner/operator.

(D) A permit application shall be subject to a thirty calendar day public comment period.

ARTICLE V. STANDARDS

Section 501. Permit Contents.

(A) After _____, 19____, any person who mines or proposes to mine from Nation lands shall not engage in such mining unless a permit for such mining operation has been obtained from the Seneca Nation. A separate permit shall be obtained for each mine site.

(B) Applications for permits may be submitted for annual terms not to exceed five years. A complete application for a new mining permit shall contain the following:

- (1) completed application forms;
- (2) a mined land-use plan;
- (3) such additional information as the Natural Resources Department may require.

(C) The Natural Resource Committee may make a determination, and notify the applicant in regard to:

- (1) appropriate setbacks from property boundaries or public thoroughfare rights-of-way;
- (2) manmade or natural barriers deigned to restrict access if needed, and if affirmative, the type, length, height and location thereof;

- (3) the control of dust;
- (4) hours of operation, and;
- (5) whether mining is prohibited at that location.

(D) Upon approval of the permit by the Council and receipt of financial security as provided in Article IV of this title, a permit shall be issued by the Clerk. Upon issuance of a permit, the Clerk shall forward a copy thereof by certified mail to the permittee and the President and Treasurer of the Seneca Nation. The Council may include in permits such conditions as may be required to achieve the purposes of this title.

(E) A certified copy of a permit issued pursuant to this law, must be publicly displayed by the permittee at the mine and at all times be visible, legible and protected from the elements.

(F) The Committee may suspend or revoke a permit to mine for repeated or willful violation of any of the terms of the permit or provisions of this law or for repeated or willful deviation from those descriptions contained in the mined land-use plan. The Committee may refuse to renew a permit upon a finding that the permittee is in repeated or willful violation of any of the terms of the permit, this law or any rule, regulation, standard, or condition promulgated thereto.

(G) Nothing in this law shall be construed as exempting any person from the provisions of any other law or regulation not otherwise superseded by this law.

(H) Seneca Nation Departments shall be required to obtain a permit. The fee will be waived and a mined land-use plan must be submitted.

(I) The applicant, permittee or, in the event no application has been made or permit issued, the person engaged in mining shall have the primary obligation to comply with the provisions of this law as well as the conditions of any permit issued thereunder.

(J) Permits issued pursuant to this law shall be renewable. A complete application for renewal shall contain the following:

- (1) completed application forms;

- (2) an updated mining plan map consistent with Section 701 of this law and including an identification of the area to be mined during the proposed permit term;
- (3) a description of any changes to the mined land-use plan; and
- (4) an identification of reclamation accomplished during the existing permit term.

(K) Any determination made by the Natural Resource Committee shall be accompanied by supporting documentation justifying the particular determinations on an individual basis and provide any determination, notices and supporting documents according to the following schedule:

- (1) within thirty days after receipt for a major project;
- (2) within thirty days after receipt for a minor project.

(L) If the applicant finds that the determinations made by the Natural Resource Committee pursuant to paragraph (C) of this subdivision are reasonable and necessary, the determinations shall be incorporated into the permit, if one is issued. If the applicant does not agree that the determinations are justifiable, then the applicant shall provide a written statement to the Natural Resource Committee as the reason or reasons why the whole or a part of any of the determination should not be incorporated.

(M) A proposed mine of five acres or greater total acreage, regardless of length of the mining period, shall be a major project. The Nation shall, by regulation, provide a minimum thirty day public comment period on all permit applications for mined land reclamation permits classified as major projects.

Section 502. Cancellation; Continued Obligations.

(A) If permittee shall fail to comply with any of the provisions of this law or the term of the permit, such failure shall be grounds to cancel the permit. The Nation shall notify the permittee, in writing, of such non-compliance and afford a reasonable opportunity to cure such non-compliance. If, thirty (30) days after the date of written

notice, the permittee has failed to remedy the non-compliance, the Committee Chair/Vice-Chair may cancel the permit upon the recommendation of the Committee.

(B) This section shall not in any way limit or impair any other remedies or causes of action the Nation (and if applicable, the land user) may have against the permittee pursuant to law or equity. Cancellation of a permit shall not eliminate the obligations of the permittee thereunder, including, but not limited to, the obligation to pay a minimum royalty and conduct reclamation efforts according to the mined land-use plan.

ARTICLE VI. CONDUCT OF OPERATIONS

Section 601. Conduct of Operations.

(A) Permittee shall conduct all operations with due regard to preventing unnecessary damage to vegetation, timber, soil, creeks, roads, bridges, fences, and other improvements.

(B) Permittee may cut trees, including timber of commercial value during the course of its operations on the premises, provided however, that the same shall be the property of the owner and shall be so stacked as to make its sale feasible by the owner.

(C) Permittee shall commence operations as of the effective date of the permit and shall continue production with continuity and without interruption. Failure by permittee to continue operations, except when production may be interrupted by strikes, the elements, or casualties not attributable to the permittee, shall be deemed non-compliance with the permit and shall render it subject to cancellation, provided that the Committee may, upon the written request of the permittee, authorize suspension of operations due to a seasonal absence of market. Any suspension of operations shall not relieve the permittee of the obligation to pay the Nation and the owner the minimum royalty.

(D) Operations shall be conducted only between the hours of 7:00 a.m. through 7:00 p.m., Monday through Saturday unless otherwise determined by Section 501 (C) (4).

(E) Care shall be taken to protect waters from pollution by waste, debris, toxic fluid or other materials.

(F) Topsoil shall be removed separately and stockpiled apart from the balance of overburden. Topsoil shall not be sold.

(G) Permittee shall comply with all applicable Nation law, including but not limited to Nation environmental conservation and protection laws and employment rights laws, including without limitation the Tribal Employment Rights Ordinance (TERO) adopted by the Council on June 23, 1993, as the same may be hereinafter modified or amended.

(H) Permittee shall conduct all operations in a manner consistent with industry standards and that is not hazardous to life and limb.

Section 602. Conduct of Operations; Water Operations.

(A) No sand and gravel shall be removed from any creek within Nation lands. Permittee shall not be permitted to use any creek or stream of water to gain access to adjacent and gravel operations of permittee unless culverts or armored crossings are installed and maintained.

(B) Permittee shall not divert any creek from its natural course.

ARTICLE VII. MINED LAND-USE PLAN; RECLAMATION

Section 701. Mined Land-Use Plan.

(A) All mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan. The approved mined land-use plan shall consist of both a mining and reclamation plan and any other information which the Committee deems necessary in order to achieve the purposes of this law.

(B) The mining plan shall consist of a written and graphic description of the proposed mining operation, including the boundaries of the land controlled by the applicant, the outline of potential affected acreage and the general sequence of areas to be mined through successive permit terms. The graphic description shall include the location of the mine and shall identify the land affected by mining including but not limited to areas of excavation; areas of overburden, tailings, and spoil; areas of topsoil and mineral stockpiles; processing plant areas; haulageways; shipping and storage areas; drainage features and water impoundments. The written description of the plan shall include the applicant's mining method and measures to be taken to minimize adverse environmental impacts resulting from the mining operation.

Section 702. Reclamation Plan; Specific Provisions.

(A) The reclamation plan shall consist of a graphic and written description of the proposed reclamation. The graphic description shall include maps and cross sections which illustrate the final physical state of the reclaimed land. The written description of the plan shall describe the manner in which the affected land is to be reclaimed, and a schedule for performing such reclamation.

(B) The Natural Resource Committee may, after notice and an opportunity for a hearing, impose a reclamation plan in the absence of an approved reclamation plan or upon a finding of non-compliance with or failure of an approved reclamation plan.

(C) The reclamation of all affected land shall be completed in accordance with the schedule contained in the approved mined land-use plan pertaining thereto. The schedule, where possible, shall provide for orderly, continuing reclamation concurrent with mining. The permittee shall submit to the department a notice of termination of mining within thirty days after such termination.

Reclamation of the affected land shall be completed within a two year period after mining is terminated, as determined by the department, unless the department deems it in the best interest of the people of the Seneca Nation to allow a longer period for reclamation. The permittee shall submit to the Committee a notice of completion of reclamation within thirty days of such completion. If the Committee fails to approve or

disapprove the adequacy of reclamation within ninety days after receipt of the notice of completion of reclamation, the permittee may notify the Committee of such failure by means of certified mail return receipt requested addressed to the Environmental Protection Department. If within thirty days after receipt of such notice, the Committee fails to make a decision, the permittee shall be relieved of the obligation to maintain financial security in respect to reclamation; provided, however, nothing herein shall relieve the permittee of the obligation to accomplish adequate reclamation. The permittee shall file period reports at such times as the Committee shall require, indicating areas for which reclamation has been completed. The Committee shall inspect such areas and notify the permittee whether the reclamation is in accordance with the approved plan or whether there are deficiencies that must be corrected.

(D) The reclamation plan shall describe the applicant's proposed land-use objective to be achieved in the final stage of reclamation; the proposed method of reclaiming the affected land providing, where possible, for orderly, continuing reclamation concurrent with mining; and a schedule for reclaiming the affected land.

(E) Acceptable basic reclamation requirements as contained in this section shall provide for the development of the affected land either to a condition or physical state which is similar to and compatible with that which existed prior to any mining or which encourages the future productive use of the land. Basic reclamation shall include: grading and slope treatment, disposal of refuse or spoil, drainage and water control features, and revegetation; proposals for the prevention of pollution, the protection of the environment and of the property, health, safety and general welfare of the people of the Nation. The applicability of such requirements shall be determined by the department on the basis of the location of the affected land, the type of material being mined and the natural processes to which the affected land will be subject. When the proposed reclamation plan consists of subsequent construction, the site may be so prepared. In such cases, there must be a contractual agreement on file with the department at the time mining ceases indicating that construction will commence within six months unless this period is extended by the department. The applicant must

demonstrate to the satisfaction of the department that adequate measures will be taken to protect the environment during such period.

If construction does not commence within the six month period after the termination of mining, or, if construction is for any reason thereafter terminated before completion, the permittee shall be responsible for reclaiming the affected land to a condition which satisfies the basic reclamation requirements as contained in the permit.

Section 703. Reclamation Plan; Graphic and Written Portions.

(A) The graphic portion of the reclamation plan shall consist of a map or photograph prepared to the same standards as for the mining plan. The information to be presented in graphic form shall include:

- (1) an outline of the affected land;
- (2) a grading plan which illustrates, by the use of contours or accompanying cross sections, the proposed final grades to be established on the affected land insofar as it is possible to determine; and
- (3) a map which illustrates the proposed final stage of reclamation for all affected land including but not limited to the following: revegetated areas, drainage features, water impoundments, building sites, recreational areas, wildlife areas, haulageways and any other feature consistent with the applicant's land-use objective and proposed reclamation method.

(B) The written portion of the reclamation plan shall include:

- (1) a description of the applicant's land-use objective such as: farming; pasture; forestry; recreation, industrial, commercial or residential uses; a combination thereof; or other uses acceptable to the Natural Resource Committee. The affected land, or a portion thereof, may be preserved as a scientific or historical site upon the recommendation of a qualified

professional in either field and with the approval of the Natural Resource Committee.

- (2) a description of the applicant's proposed method of reclaiming the affected land which is consistent with the stated land-use objective. This description shall include specifics relative to: the disposition of all refuse, spoil, stockpile and personal property; the treatment of haulageways; drainage and water control; water impoundments; grading and revegetation. The applicant shall be governed by the following standards in submitting the required information.

Section 704. Reclamation Plan; Disposition of Materials.

(A) All refuse, spoil, unused mineral stockpiles and personal property shall either be removed from the permit area or utilized during reclamation of the affected land.

- (1) Off-site disposal of refuse during reclamation shall be governed by applicable rules and regulations of the Nation relative to solid waste management (refuse disposal) and be properly disposed of off Nation lands.
- (2) On-site disposal of refuse shall be accomplished in a manner such that emanations (fumes and leachate) therefrom shall not cause or contribute to a condition in a contravention of the classifications and standards of quality and purity of the air and waters of the Nation. Refuse and other materials which will not support vegetative growth shall be covered to a minimum compacted depth of two feet. All cover material shall be identified in the plan and must be acceptable to the Committee.
- (3) Spoil and unused mineral stockpiles may be utilized to blend areas of sharply contrasting slopes or to provide a cover material consistent with the proposed reclamation plan. That

mineral which is not utilized for the above purposes and which remains at the mine shall be treated in accordance with all other requirements for grading, drainage, erosion control and revegetation consistent with the applicable standards as described in this law.

- (4) Large blocks or rock, boulders or other similar materials which are to remain on the affected land shall be included in landscaping or shall be covered as described in this section.
- (5) Trees, brush, stumps and other vegetative material remaining on the affected land may be burned, reduced to a mulch or covered as hereinabove described. The burning of the material shall only be allowed if the permittee has obtained a restricted burning permit from the Natural Resource Committee.
- (6) All machinery, equipment, tools and other personal property or any portion thereof shall either be removed from the permit area, disposed of on the site or incorporated into the final use of the affected land. Personal property which is disposed of on the site shall be considered as refuse and shall be treated in accordance with the standards for the disposition of materials as contained in this section.

(B) Treatment of haulageways. Haulageways within the permit area shall be incorporated into the final use of the land or shall be reclaimed in accordance with the standards applicable to other affected land.

- (1) Those haulageways which are to be retained as public roads or travelways in conjunction with the applicant's land-use objectives shall be subject to applicable governmental requirements.
- (2) Those haulageways which are not to be incorporated into the final use of the land shall be treated as affected land and

reclaimed in a manner which is consistent with the proposed final land use.

(C) Drainage. Every reasonable effort shall be made to minimize the disturbance of the prevailing hydrologic balance at and adjacent to the mine.

- (1) All water discharged to surface water or to groundwater shall be governed by the rules and regulations of the Nation relative to the quality and purity of the waters of the Nation.
- (2) Water courses or impoundments shall be provided to transmit, store or remove surface water run-off and to reduce the potential for flooding and the subsequent erosion, siltation and pollution of adjacent streams or lands.
- (3) Drainage and water control features (channels, culverts, impoundments, etc.) which would be directly influenced by the effects of flooding shall be designed to protect the property, health, safety and general welfare of the people of the Nation. The design standards shall be such that reclamation will not have a detrimental effect on such property through an increase in the amount or rate of run-off or erosion, or by a change in the drainage pattern.

(D) Water impoundment. Water may be impounded for wildlife, recreation, water control or water supply purposes provided that the construction of such impoundments do not contravene the standards established below:

- (1) Water impoundments constructed during mining shall either be incorporated into the final use of the land or shall be reclaimed in accordance with requirements for all affected land.
- (2) All water impoundments and associated structures shall be designed and constructed in accordance with acceptable engineering practice and applicable government standards.
- (3) All water impoundments shall be constructed in a manner which allows the continuous movement of water, such as by

evaporation, percolation or flow, and which precludes the creation of stagnant, or otherwise undesirable conditions.

- (4) All water impoundments shall be constructed with features to allow a safe and convenient means of entry and exit for inspection or use.
- (5) The discharge of water from any impoundment to either surface or subsurface waters shall be governed by the regulations of the Nation relative to the preservation of the quality and purity of such waters.

(E) Grading. All mine faces and openings shall be treated in such a manner as to leave them in a condition which minimizes the possibility of rock falls, slope failure and collapse. The type of treatment shall be compatible with the surrounding terrain and shall be based upon the natural characteristics of the material including the grain size of the mineral, degree of consolidation, weathering characteristics, discontinuities (areas or plans of weakness) and the heights and configuration of a face or opening. Such treatment shall be consistent with the applicant' land-use objective.

- (1) A mine face which is loose or fractured and unlikely to hold a table slope shall be stabilized by the use of controlled blasting or scaling; by the use of benches, flatter slopes or reduced face heights or by the use of artificial rock stabilization methods such as rock bolting and application of pneumatically projected concrete.
- (2) All ridges, peaks and slopes created either by excavation of a mineral or by the disposal of spoil shall be left no steeper than the following: rock (ledge or bedrock) - 90 degrees depending upon the condition and characteristics of the formation as it exists in the mine; talus (broken rock) - 37 degrees, or a slope of one vertical on one and one-quarter horizontal, unless the talus is to be covered and revegetated in which case the slope shall not exceed that which is required for fine sand. silt and

clay; coarse sand and gravel - 33 degrees, or a slope of one vertical on one and one-half horizontal; fine sand, silt and clay - 26 degrees or a slope of one vertical on two horizontal. The slope provisions contained in this clause may be modified with the approval of the Committee.

- (3) The perimeter of a mine shall be treated in a manner so as to eliminate hazards and to minimize the visual impact of the mine to the maximum practical extent. Treatment to minimize the visual impact of the mine may include the use of berm, shrub and tree plantings and fencing.

(F) **Revegetation.** A vegetative cover shall be provided on the affected land where vegetation is indigenous to the area and where revegetation is consistent with the land-use objective as designated in an approved mined land-use plan.

- (1) Any area designated for revegetation shall be covered with an amount and type of material sufficient to support the growth of the proposed plant materials. A minimum of six inches of a cover material with a soil composition capable of sustaining plant growth shall be provided on all land to be revegetated. The amount of soil cover may be reduced if the permittee can demonstrate that a lesser amount will be sufficient to support the growth of the proposed plant material in accordance with the requirements contained in this subparagraph.
- (2) Vegetative material used in reclamation shall consist of grasses, legumes, herbaceous or woody plants, shrubs, trees or a mixture thereof which is consistent with site capabilities such as drainage, pH, soil depth, available nutrients soil composition and climate. Such vegetation should be designed to provide a cover consistent with the stated land-use objective and which does not constitute a health hazard.

- (3) Plant material to be utilized in revegetating the affected land shall be planted during the first planting season following the preparation of the land for such purpose.
- (4) An acceptable vegetative cover shall be considered to be a permanent stand or stand capable of regeneration and succession sufficient to assure 75 percent coverage of the areas planted if only ground cover (no trees) is utilized, or a 60 percent survival rate for shrubs and trees which are utilized, by the end of the second growing season after planting. If revegetation is not completely successful, the areas of failure must be randomly distributed, shall not exceed one-half acre in every two acres so treated and shall not endanger the success of revegetation in adjacent areas within the affected land.
- (5) Fencing disturbed as a result of the exercise of this permit shall be replaced in its present alignment, at the expense of the permittee.
- (6) The premises shall be reseeded by the permittee, with an appropriate grass mixture. The bond specified in Section 705 (A) shall remain in force until the grass is firmly established.

Section 705. Reclamation Schedule.

(A) A schedule, accepted or designated by the Natural Resource Committee which provides details as to the timing for each phase of reclamation shall be submitted.

(B) The permittee shall reclaim all affected land within a two year period after mining ceases unless the Committee shall approve a longer period. The reclamation period may be extended in the following cases:

- (1) Upon submission by the permittee of evidence, satisfactory to the Committee, that reclamation cannot be completed within the approved time schedule. An extension shall be granted for

this case only when the permittee has made a reasonable effort to comply with the provisions of Section 704 and this subchapter.

- (2) Upon the temporary shutdown of a mine, during which time the permit and reclamation bond requirements shall remain in force. The permittee will also be required to maintain the mine in a condition which does not result in contravention of environmental standards.

(C) The permittee shall notify the Natural Resources Coordinator when reclamation of the affected land has been completed. The Nation shall conduct an inspection within 15 days of receipt of said notification to establish that reclamation has been performed in accordance with the mined land-use plan as submitted by the permittee. If the inspection indicates that the permittee has not complied with the reclamation provisions of the mined-land use plan, reclamation shall not be approved. In such case, the permittee shall be required to correct inadequacies encountered during the Committee's review process. If the Committee determines that the permittee has complied with the reclamation provisions of the mined land-use plan, reclamation shall be approved and the bond shall be released except as provided in Section 706 of this law.

Section 706. Financial Security for Reclamation.

(A) Before the Nation may issue a permit, the applicant, unless exempt, shall furnish financial security to ensure the performance of reclamation as provided in the approved mined land-use plan and naming the Seneca Nation of Indians as a beneficiary. Financial security shall be in the form of a bond and from a corporate surety licensed to do business as such in the state or any other form the Committee may deem acceptable. Any interest accruing as a result of such security shall be the exclusive property of the permittee.

(B) The Natural Resource Committee shall determine the amount, condition, and terms of financial security. The amount shall be based upon the estimated cost of

reclaiming the affected land, which shall be based on information contained in the permit application and upon such information as an investigation by the Natural Resource Committee may disclose.

(C) The financial security shall remain in full force and effect until the Natural Resource Committee has approved the reclamation. At the discretion of the Committee, the permittee may secure the release of that portion of the financial security for affected land on which reclamation has been completed and approved by the Committee.

(D) If the financial security shall for any reason be canceled, within thirty days after receiving notice thereof, the permittee shall provide a valid replacement under the same conditions as described in this section. Failure to provide a replacement bond within such period may, at the discretion of the Committee, result in the immediate suspension of the mining permit by the Nation.

(E) If a permit is suspended or revoked, the Committee may require the permittee to commence reclamation upon thirty days notice.

(F) If the permittee fails to commence or to complete the reclamation as required, the Nation may attach the financial security furnished by the permittee. In any event, the full cost of completing reclamation shall be the personal liability of the permittee and/or the person engaged in mining and the Natural Resources Committee, acting by the Nation's Department of Justice, may bring suit to recover all costs to secure the reclamation not covered by the financial security. The materials, machinery, implements and tools of every description which may be found at the mine, or other assets of the permittee and/or the person engaged in mining shall be subject to a lien of the Nation for the amount expended for reclamation of affected lands and shall not be removed without the written consent of the Nation. Such lien may be foreclosed by the Department of Justice in the same manner as a mechanic's lien. Any and all moneys recovered shall be deposited in the General Fund of the Seneca Nation.

(G) The Seneca Nation Tribal Government and the Natural Resource Department shall be exempt from the requirements of this section.

ARTICLE VIII. ROYALTIES**Section 801. Royalties; Payment.**

(A) A contractor shall pay to the Nation a royalty for all sand and gravel removed pursuant to the permit. The royalty rate may be negotiated between the contractor and the owner and shall not be less than one dollar and fifty cents (\$1.50) per ton, provided, that if the contractor is a member, the rate shall not be less than twice what the owner/operator rate is. The minimum royalty for new permits shall be reviewed annually by the Committee for consistency with the market and a report of the same shall be issued to the Treasurer.

(B) An owner/operator shall pay to the Nation a royalty for all sand and gravel removed pursuant to the permit. The royalty rate may be negotiated between the owner/operator and the Committee but shall not be less than (1) thirty cents (\$.30) per ton for sand and gravel removed from the Cattaraugus Reservation, and (2) twenty-five cents (\$.25) per ton for sand and gravel removed from the Allegany Reservation. The minimum royalty for new permits shall be reviewed annually by the Committee for consistency with the market.

(C) Royalties shall be due on a monthly basis. The total amount due per month shall be paid to the Nation, in care of the Treasurer, on or before the fifteenth (15th) day of the month following the month of any such removal. Under a Standard Sand and Gravel Permit, within fifteen (15) days of receipt of such payment, the Nation shall pay one half the tendered amount to the owner identified on the permit.

(D) A permittee shall pay to the Nation a minimum annual royalty of one thousand dollars (\$1,000.00). The minimum royalty shall be paid to the Nation, in care of the Treasurer, on or before six months after issuance of the permit and annually thereafter. Under a Standard Sand and Gravel Permit, within fifteen (15) days of receipt of such payment, the Nation shall pay one half the tendered amount to the owner identified on the permit.

(E) The Committee shall monitor all permittees for payment of the appropriate royalties. The Treasurer, or person acting at his/her direction, shall assist the Committee in this regard.

Section 802. Measurement.

(A) A cross section shall be conducted on the mining site by a licensed surveyor retained at the expense of the Nation prior to the beginning of each mining season and again at the end of each mining season.

(B) The Nation shall have the right to determine the amount of sand and gravel removed from the premises. In the event of a dispute over the accuracy of any sand and gravel removed, the burden of proof shall be on the permittee to show that such measurement is not accurate.

Section 803. Records.

(A) A permittee shall maintain daily reports of all sand and gravel removed each day and shall furnish to the Nation (and if applicable, the owner) the daily reports on a monthly basis, sworn to as correct by permittee, showing the total amount of sand and gravel removed during each month (in tons). Permittee shall include copies of daily work and/or load sheets in such report.

(B) Monthly reports shall be submitted to the Nation, in care of the Natural Resource Department, by the fifteenth (15th) day of each month following the month of removal.

Section 804. Access to Premises and Records.

(A) Issuance of a permit shall constitute authorization by the Nation to the permittee for ingress and egress across Nation lands. Any permittee must have written permission to cross adjacent allotments. Permittee is subject to additional terms and conditions which may be contained in the permit, provided, that the permittee shall be liable for any damages that may result from such ingress or egress.

(B) The Nation, including its employees, agents and representatives shall have the right of access at all reasonable times during normal business hours on normal business days to enter and inspect any property, premises, and records covered by a permit for the purpose of ascertaining compliance with this law, the permit or other Nation laws. The permittee shall provide a person to accompany the Nation's representative during an inspection of the permit area when notification is provided, be it written or verbal, at least 24 hours prior to such inspection.

Section 805. Reserved Rights.

(A) The Nation expressly reserves all its rights in the premises not inconsistent with the permit and Nation law and custom, including but not limited to the right to use, lease, sell, or otherwise dispose of minerals underlying the premise so long as such disposition does not materially interfere with operations authorized by the permit.

(B) The owner reserves the right to use the premises for all purposes not inconsistent with the permit and Nation law and custom.

Section 806. Use of Premises.

(A) Permittee may place upon the premises such machinery as is reasonably necessary for the removal of sand and gravel, provided, that upon completion of operations and pit restoration, all structures, machinery, equipment, tools and miscellaneous materials shall be removed and the site of the operations left in a neat and sightly condition.

(B) Permittee shall maintain all access roads to the premises, including roads across other allotments, for which a temporary right-of-way has been obtained in dust free conditions at all times that operations are being conducted.

Section 807. Performance Bond; Insurance.

(A) Permittee, prior to beginning operations and within thirty (30) days of enactment of this law, shall provide to the Nation a performance bond in the sum of ten

thousand dollars (\$10,000.00) to ensure the faithful performance of its obligations hereunder.

(B) Permittee, prior to beginning operations and within thirty (30) days of the enactment of this law, shall provide to the Nation a certificate of insurance evidencing general liability and applicable workmen's compensation and vehicle liability coverage for its operations hereunder with a minimum limit of one hundred thousand dollars (\$100,000.00) for personal injury and naming the Seneca Nation of Indians as an additional insured party. Permittee shall notify the Committee of any cancellation or other material change in insurance coverage within seven (7) days of such an event.

ARTICLE IX. ENFORCEMENT

Section 901. Jurisdiction.

As a precondition to entering into a permit, permittee (and if applicable, the owner) shall consent to the exclusive jurisdiction of the Nation's Peacemakers' Court over all matters arising out of the permit or operations undertaken pursuant hereto, including but not limited to breach of contract, damages, injunctive or declaratory relief. The Nation, in its discretion, may pursue such action in courts outside of the Nation.

Section 902. Sovereign Immunity.

Nothing in this law or any permit shall be construed as a waiver of sovereign immunity by the Nation.

Section 903. Enforcement.

(A) Violation of any provisions of this law may result in immediate cancellation of a permit by the Natural Resource Committee Chair/Vice-Chair and upon the recommendation of the Committee, and a fine of up to \$5,000.00 per occurrence. Each day that the circumstances resulting in said violation shall be deemed an

occurrence. Notice of cancellation shall be in writing and shall specify the grounds for cancellation.

(B) The Nation's Conservation Officers, Marshals and Police Officers are hereby authorized to enforce the provisions of this law and may take such reasonable action as may be necessary to prevent a violation of this law, including but not limited to, the attachment of any equipment utilized in violation the provisions of this law. The Nation shall store the attached items subject to further order of the court. Notice of the attachment and a date for the court to determine the disposition of the attached items shall be served upon the defendant simultaneously with the complaint. The defendant from whom the equipment was attached shall have the opportunity to redeem the attached items at any time by paying into the court the maximum possible fine that could be incurred for said violation, which the court shall hold pending final judgment.

1. MINED LAND FILE NUMBER (if assigned)		2. TELEPHONE #	
3. NAME OF APPLICANT			
4. PERMANENT ADDRESS			
CITY	STATE	ZIP CODE	
5. CONTACT PERSON		6. TELEPHONE #	
8. TAXPAYER I.D. <small>If other than individual, provide Federal Taxpayer I.D. #</small>		9. APPLICATION TYPE <small>___ New ___ Renewal ___ Amend</small>	

for the entire mining site exceed 5 acres? YES NO

b. Will the vertical depth from the top of the mine face to the floor exceed 20 feet? YES NO

c. Will there be on-site processing of mining products (eg. crushing, screening, washing)? YES NO

d. Will mining occur within 100 feet of a surface water body (eg. streams, lakes) or wetland area? YES NO

e. Will any consolidated minerals be mined (eg. limestone, trap rock, sandstone)? YES NO

f. Will mining occur within 50' of any dwelling? YES NO

g. Will mining ever occur at or below the mean high water table? YES NO

10. a. PRESENT PERMIT TERM b. COMING PERMIT TERM
 Expiration date ___/___/___ 5 years Other ___ years

11. COMMON GEOLOGIC NAME OF MINERAL TO BE MINED

12. SMR ORDINANCES
 Is mining prohibited at this location? ___ Yes ___ No

13. ARE ANY OTHER SMR MINING PERMITS CURRENTLY HELD BY THE APPLICANT? ___ Yes ___ No (If yes, give # _____)

14. Has any owner, partner, corporate officer or corporate director of your organization ever held any of these positions in another organization that has had a SMR mining permit SUSPENDED OR REVOKED or has had a SMR mined land reclamation bond FORFEITED? ___ Yes ___ No
 IF YES, IDENTIFY THE PERSON(S): _____

15. ACREAGE SUMMARY (To be filled in by applicant)

a. Total acreage controlled by owner at this location _____ acres

b. Total acreage affected since _____, 18____ _____ acres

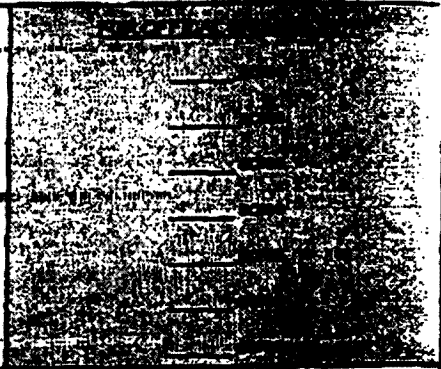
c. Total acreage approved by SMR as reclaimed since _____, 18____ _____ acres

d. Current affected acreage (c minus d) _____ acres

e. Acreage included in this application, but not previously approved _____ acres

f. New acreage to be affected during the coming permit term _____ acres

g. Number of acres to be reclaimed during coming permit term _____ acres



16. NAME OF MINING SITE

17. ~~LAND LOCATION~~
 Road _____
 Nearest Road Intersection _____
 Town _____ County _____

18. MAP LOCATION
 a. Reservation _____ b. Mines & Bounds _____

19. NAME AND ADDRESS OF SURFACE LANDOWNER

20. I am the owner of the property that is to be mined by the above applicant. I have read the contents of the Mined Land Use Plan, which sets forth the applicant's mining and reclamation plan for the property to be mined, and I hereby irrevocably consent and agree to the performance of the Mined Land Use Plan by the applicant, his surety or insurer or the Natural Resource Department. I further agree to allow access to the property to department personnel for the purpose of conducting inspections or investigations in the regular course of their duties.

SIGNATURE OF OWNER: _____ DATE: _____

21. I hereby affirm, under penalty of perjury that information provided on this form is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.48 of the Penal Law.

NAME, TITLE AND SIGNATURE OF APPLICANT OR AUTHORIZED REPRESENTATIVE _____ DATE _____

SIGNATURE OF CONTRACTOR: _____ DATE _____

MINED LAND-USE PLAN CHECKLIST

Your application must include an application form, organization report (in triplicate), Environmental Assessment Form, and a mined land-use plan (in quadruplicate).

The mined land-use plan consists of four parts:

- 1) mining plan - graphic portion
- 2) mining plan - written portion
- 3) reclamation plan - graphic portion
- 4) reclamation plan - written portion

Mining Plan - Graphic Portion must show:

- a) accurate geographic location of the mine
- b) location of adjacent topographic, cultural and land-use features
- c) outline of the land to be affected through each permit term and through the Life of the Mine
- d) location of size of the following elements of mining:
 1. cuts and excavations
 2. areas of mineral preparation and processing
 3. haulageways
 4. areas of mineral, refuse and spoil storage
 5. repair and shipping areas
 6. drainage and water control features
 7. screening (noise and/or visual barriers)
- e) distances and bearings to the nearest residences and to all property lines from the Life of Mine limits

Requirements a, b and c should be located on the appropriate U.S.G.S. Quadrangle, NYS DOT Quadrangle, or County Highway Map. Air photos, enlarged quadrangles, or original maps are acceptable to satisfy requirements c and e, provided that the scale does not exceed one inch equals 660 feet.

Mining Plan - Written Portion must show:

- a) description of the affected land indicating the present use of the land
- b) description of proposed or existing mine indicating if the operation is a surface consolidated, surface unconsolidated, or underground mine
- c) description of mining method indicating:
 1. extraction method

SOURCE WATER PROTECTION CODE
for the
SENECA NATION OF INDIANS
TERRITORY



Approved: April 13, 2013

SNI EPD

84 Iroquois Dr.
Irving NY 14081
Phone # (716) 532-2546
Fax # (716) 532-8322

Seneca Nation of Indians

COPY

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Clerk - Geraldine Huff

12837 ROUTE 438
CATTARAUGUS TERRITORY
SENECA NATION
IRVING 14081

Tel. (716) 532-4900
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Treasurer - Rodney D. Pierce

90 OHI:YO' WAY
ALLEGANY TERRITORY
SENECA NATION
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THE REGULAR SESSION OF COUNCIL OF
THE SENECA NATION OF INDIANS HELD
ON APRIL 13, 2013 AT THE WILLIAM
SENECA AT ADMINISTRATION BUILDING
ON THE CATTARAUGUS TERRITORY
IRVING, NEW YORK, 14081.

CN: R-04-13-13-11

EXECUTIVES PRESENT:

PRESIDENT - BARRY E. SNYDER, SR.
CLERK - GERALDINE HUFF

ENVIRONMENTAL PROTECTION DEPARTMENT

SNI SOURCE WATER PROTECTION CODE

MOTION: by Al George, seconded by Shelley Huff, that Tribal Council approves the following resolution, as amended;

WHEREAS, the Seneca Nation is a federally recognized sovereign government with inherent authority to enact regulation to protect its membership, the environment of its Territories, and the activities therein, and;

WHEREAS, the Seneca Nation recognizes the need to continue to support environmental efforts and to oversee the public health and safety issues of its members, and;

WHEREAS, the water assessments that were conducted by the New York Rural Water Association and Seneca Nation Health Department analyzed and identified a level of susceptibility from point and non-point source pollutants that may degrade the Nation's drinking water resources, and;

WHEREAS, it is necessary to exercise the right to self-determination and to ensure the welfare of the people of the Seneca Nation of Indians by minimizing, eliminating, or preventing risk of groundwater contamination to wells that supply public drinking water, and;

ENVIRONMENTAL PROTECTION DEPARTMENT
SNI SOURCE WATER PROTECTION CODE
REGULAR SESSION OF COUNCIL
APRIL 13, 2013
PAGE 2

WHEREAS, the enactment of the Seneca Nation of Indians Source Water Protection Code will enable such action and will be revised or amended as needed, or as Seneca Nation requirements change.

NOW, THEREFORE, BE IT

RESOLVED, the Seneca Nation Council hereby accepts the Source Water Protection Code as written,

AND BE IT FURTHER RESOLVED, that the Seneca Nation of Indians Source Water Code shall be enacted thirty (30) days from today to allow a period for public comment, and when adopted as an element of the Seneca Nation environmental laws, shall be awarded equivalent standing as laws passed previously. Further, that a moratorium of any activity that would affect the Source Water Protection area be in effect during the period of public comment.

ALL IN FAVOR

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on April 13, 2013 on the Cattaraugus Territory, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the William Seneca Administration Building, on the Cattaraugus Territory, on the 22nd day of April, 2013.

ATTEST:

{S E A L}


GERALDINE HUFF, CLERK
SENECA NATION OF INDIANS

SENECA NATION OF INDIANS
SOURCE WATER PROTECTION CODE

I. Title

This Code shall be known as the “Seneca Nation of Indians Source Water Protection Code”

II. Applicability

This Code shall apply to all Seneca citizens, businesses and entities, and non-Seneca individuals, businesses and entities within the lands and Territories of the Seneca Nation of Indians, including the Allegany, Cattaraugus, Oil Spring, Buffalo Creek and Niagara Falls Territories.

III. Purpose

The purpose of this Code is to ensure the health, safety and welfare of the citizens of the Seneca Nation of Indians, and all other within the Lands and Territories of the Seneca Nation of Indians, and to facilitate the adequate provision of water through the elimination or prevention of ground water contamination in the vicinity of wells that supply public drinking water for the Nation. In enacting this Code, the Nation is exercising its inherent right of self-determination to freely determine and pursue the protection of its people, which is considered a human right of indigenous peoples pursuant to the United Nations Declaration on the Rights of Indigenous People (“UN Declaration”), Articles 3 and 4.¹

IV. Definitions

For the purpose of this Code, the following definitions shall apply:

(A) “Agricultural waste storage facility” shall mean an impoundment made by constructing an embankment and/or excavating a pit or by fabricating a structure to temporarily store agricultural wastes such as manure, wastewater, and contaminated runoff,

(B) “Agricultural waste treatment facility” shall mean a facility to biologically treat agricultural waste such as manure and wastewater. Commonly it is composed of an impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure (i.e. anaerobic lagoons). Other treatment facilities included constructed wetlands, anaerobic digesters, etc.

(C) “Agronomic rate” shall mean the rate of nitrogen addition designed to provide the amount of nitrogen needed by the crop or vegetation grown on the land, and to minimize the amount of

¹ *Article 3:* Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural developments.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions

nitrogen that passes below the root zone of the crop or vegetation grown on the land to groundwater. The agronomic rate is to be determined by a Certified Crop Adviser in an annual fertilizer application plan submitted to the Seneca Nation of Indians Department of Environmental Protection for approval.

(D) "Bulk materials" shall mean materials ordered, stored, issued, or sold by weight, volume, or footage.

(E) "Composting facility" shall mean a facility to treat agricultural waste and possibly other wastes through biological stabilization of organic material (decomposition).

(F) "Concentrated animal feeding operation (CAFO)" shall mean an animal feeding operation that meets the regulatory definition of a CAFO based upon the numbers and types of animals and/or method of animal waste discharge.

(G) "Deicing compounds" shall mean any bulk quantities of chloride compounds and/or other deicing compounds (e.g., urea or calcium magnesium acetate) intended for application to roads, including mixtures of sand and chloride compounds in any proportion where the chloride compounds constitute over eight percent of the mixture. Bulk quantity of deicing compounds means any quantity, but does not include any chloride compounds in a solid form which are packaged in waterproof bags or containers which do not exceed one hundred pounds each.

(H) "Disposal" shall mean the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing by any other means of any solid waste, petroleum, radioactive material, hazardous substance, hazardous waste, or aqueous carried waste into or onto land or a surface water body.

(I) "Fertilizers" shall mean any commercially produced mixture generally containing phosphorous, nitrogen, and potassium which is applied to the ground to increase nutrients from plants.

(J) "Fertilizer application plan" shall mean a written annual plan for nutrient application at agronomic rates for producing an agricultural crop.

(K) "Fish hatchery waste" shall mean undigested food and fecal material emanating from a fish hatchery.

(L) "Food processing waste" shall mean waste resulting solely from the processing of fruits, vegetables, grains, dairy products and related food products.

(M) "Garbage" shall mean putrescible solid waste including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods.

(N) "Groundwater" shall mean water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of ground water by an unsaturated zone.

(O) "Hazardous substance" shall mean any substance which: (1) because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed; (2) poses a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; (3) because of its toxicity or concentration within biological chains, presents a demonstrated threat to biological life cycles when released into the environment.

(P) "Impervious surface" shall mean any man-made material, such as pavement used in parking lots or driveways or any building or other structure on a lot that does not allow surface water to penetrate into the soil.

(Q) "Manure" shall mean animal feces and urine, and associated bedding material.

(R) "Manure transfer system" shall mean a manure conveyance system to transfer farm generated agricultural wastes (e.g., manure, soiled bedding material, spilled feed, processing or wash water, and other wastes) to a composting facility, agricultural waste storage facility, agricultural waste treatment facility, a loading area, and/or agricultural land for application and final utilization. Such a system typically includes any combination of hoppers, pumps, tanks, reception pits, lined ditches, pipelines, sprinklers, and/or spreaders.

(S) "Medical waste" shall mean waste generated in the diagnosis, treatment (e.g., provision of medical services), or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological products.

(T) "Mineral" shall mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth including but not limited to architectural stone, gem stones, limestone, granite, ore, bluestone, gravel and sand. Peat and topsoil are also considered to be minerals.

(U) "Mining" shall mean the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location.

(V) "Overburden" shall mean all of the earth, vegetation and other materials which lie above or alongside a mineral deposit.

(W) "Pathogenic organisms" shall mean disease-causing organisms including but not limited to certain bacteria, viruses, and protozoa.

(X) "Petroleum" shall mean any petroleum-based oil of any kind which is liquid at 20 degrees Celsius under atmospheric pressure and has been refined, re-refined, or otherwise processed for the purpose of: 1) being burned to produce heat or energy; 2) as a motor fuel or lubricant; or 3) in the operation of hydraulic equipment.

(Y) "Process waste" shall mean any waste generated by industrial, commercial, or mining operations that by virtue of some use, process, or procedure no longer meets the manufacturer's original product specifications.

(Z) "Putrescible" shall mean the tendency of organic matter to decompose by microorganisms with the formation of malodorous byproducts (not including woods).

(AA) "Radioactive material" shall mean any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials which are exempt from licensing and regulatory control pursuant to regulations of the United States Nuclear Regulatory Commission.

(BB) "Refuse" shall mean anything putrescible or non-putrescible that is discarded or rejected as useless or worthless.

(CC) "Septage" shall mean the contents of a septic tank, cesspool, or other individual wastewater treatment work which receives domestic sewage wastes.

(DD) "Sewage" shall mean the combination of human and household waste with water which is discharged to the home plumbing system.

(EE) "Soil amendments" shall mean elements added to the soil to improve its capacity to support plant life.

(FF) "Sludge" shall mean the solid, semi-solid, or liquid waste generated from a wastewater treatment plant, water supply treatment plant or air pollution control facility.

(GG) "Solid waste" shall mean garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility, and other discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities.

(HH) "Source water protection area" shall mean the surface and subsurface area surrounding a well or group of wells through which contaminants are reasonably likely to move toward and reach the water well(s).

V. Area of Applicability

The provisions of this Law apply to that portion of the Cattaraugus Territory of the Seneca Nation of Indians that contributes groundwater recharge to public water supply wells operated by the Nation. This area is known as the Source Water Protection Area. The Source Water Protection is identified on a map titled "Source Water Protection Area – Area of Applicability for Law" attached and made part of this Code.

VI. Regulations Within the Source Protection Area

A. The following activities and uses are prohibited in the Source Water Protection Area in order to protect the health, safety and welfare of the Seneca and non-Seneca public, and preserve the Nation's drinking water supply:

- (1) Any activity or use that involves the on-site disposal or surface land application of solid waste, medical waste, septage, sewage, sludge, human excrete, fish hatchery waste, food processing wastes, petroleum, radioactive material, hazardous substances, hazardous waste, or process wastes (including aqueous-carried waste). Subsurface disposal of sewage is permissible if necessary for the continuation of a business or residence that exists as of the date of enactment of this Code.
- (2) Land application or storage of manure or other wastes potentially containing pathogenic organisms.
- (3) Keeping or grazing of livestock.
- (4) Storage or burial of animal or human remains.
- (5) Storage of petroleum except as necessary for the provision of public drinking water. Above ground storage of petroleum is permissible if necessary for the continuation of a business or residence that exists as of the date of enactment of this Code.
- (6) Disposal of snow that has been cleared from roadways and/or motor vehicle parking areas.
- (7) Stockpiling or storage of coal, deicing compounds, hazardous substances, hazardous waste, fertilizers, inoperative motor vehicles, or any other bulk materials except as necessary for the provision of public drinking water.
- (8) Construction of a composting facility, manure transfer system, agricultural waste storage facility, agricultural waste treatment facility, or concentrated animal feeding operation (CAFO).
- (9) Construction of municipal or industrial sewage treatment facilities with disposal of primary or secondary effluent.
- (10) Mining or extraction of soils, sands and gravels except for the purpose of on-site construction.
- (11) Withdrawal of groundwater or surface water except for the safe provision of drinking water by the Seneca Nation of Indians.
- (12) Drilling of new wells used for oil, gas, gas storage, solution mining, brine disposal, and/or geothermal resources.

(13) Construction of new commercial pipelines that carry petroleum or liquid hazardous substances/waste.

B. Agricultural application of fertilizers and other soil amendments within the Source Water Protection Area, as defined by map appendix, will not be permitted per Article 2: Pesticide Use Permits, Sub-Section E of the Seneca Nation of Indians Pesticide Ordinance.

C. Except as hereinafter provided, within the Source Water Protection Area, no more than ten percent (10%) of a single lot or building site, whichever is greater, may be rendered impervious to infiltration. Maximum site impervious coverage calculations shall include all impervious surfaces with a minimum area of over one hundred (100) square feet.

D. Impervious coverage within the Source Water Protection Area may only exceed ten percent (10%) or three-thousand (3,000) square feet of a single lot or building site (whichever is greater) if a system of storm water management and treatment is developed that results in the site's post-development annual storm water recharge volume to ground water approximating the site's pre-development annual groundwater recharge volume. Such a system should also: preserve hydrologic conditions that closely resemble pre-development conditions, maintain or replicate the predevelopment hydrologic functions of storage, infiltrations, and groundwater recharge; prevent untreated discharges; reduce or prevent flooding by managing the peak discharges and volumes of runoff; minimize erosion and sedimentation; prevent degradation of water by reducing suspended solids and other pollutants; and provide increased protection of sensitive natural resources.

E. All abandoned or inactive wells in the Source Water Protection Area that are judged by an authorized representative of the Seneca Nation of Indians or designated department therein, to pose a contamination threat or a hazard to Seneca Nation citizens must be properly sealed by a registered water well contractor. The owner of the water well must submit proof within 90 days to the Seneca Nation Environmental Protection Department that the well has been properly sealed.

VII. Inspections

A. An Officer of the Seneca Nation Environmental Protection Department, Seneca Nation Marshall, or an authorized representative of the Seneca Nation, may at a reasonable time in a reasonable manner, enter and inspect any place or facility to ascertain compliance with this Code.

B. An Officer of the Seneca Nation Environmental Protection Department, Seneca Nation Marshall, or an authorized representative of the Seneca Nation may enter such grounds, structures, buildings, and places without fee or hindrance.

VIII. Violations

A. Any Seneca or non-Seneca individual, business or entity that commits or permits acts in violation of any of the provisions of this Code shall be deemed to have committed an offense and shall be liable for any such violation and the penalty therefor.

B. For every violation, the Seneca or non-Seneca individual business or entity violating the same shall be subject to a fine of at least \$500.00 and not more than \$1,000.00. However, each day of continued violation shall be deemed a separate offense.

C. The Nation may also maintain an action or proceeding to compel compliance with or restrain by injunction the violation of the provisions of the Code, and compel mitigation of any damages as the result of such violation.

IX. Effective Date and Amendment

This Code shall be effective from the date of its approval by the Council of the Seneca Nation of Indians. This Code may be amended in accordance with Seneca Nation laws and Council approval.



Seneca Nation of Indians

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AT THE REGULAR SESSION OF COUNCIL
OF THE SENECA NATION OF INDIANS
HELD ON AUGUST 8, 1998, AT THE
WILLIAM SENECA BUILDING ON THE
CATTARAUGUS INDIAN RESERVATION,
IRVING, NEW YORK 14081

EXECUTIVES PRESENT:

PRESIDENT	MICHAEL W. SCHINDLER
CLERK	ABSENT
TREASURER	RAE L. SNYDER

ACCEPTANCE OF AMENDMENTS / REVISIONS TO THE SNI UNDERGROUND AND ABOVE-
GROUND STORAGE TANK ACT ENACTED 9/22/97

otion by Stewart Redeye, Seconded by Tyler Heron, that Tribal Council
approve the following resolution:

WHEREAS, the Natural Resources Committee has reviewed and approved
necessary amendments/revisions to the Underground and Above-Ground
Storage Tank Act enacted by Council on 9/22/97,

NOW, THEREFORE, BE IT RESOLVED, that these amendments/revisions are
hereby accepted and effective as of this date, and

BE IT FURTHER RESOLVED, that all storage tank permit applications
after the effective date of these amendments shall be subject to
these amendments.

ALL IN FAVOR

MOTION CARRIED

CERTIFICATION

I hereby certify the foregoing extract is a true and correct
copy from the minutes of the Regular Session of Council of the Seneca
Nation of Indians held on the Cattaraugus Indian Reservation,
original of which is on file in the Clerks Office of the Seneca
Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and
cause the seal to be affixed at the William Seneca Administration
Building on the Cattaraugus Indian Reservation, Irving, New York on
the 12th day of August 1998.

THE SENECA NATION OF INDIANS



UNDERGROUND

AND

ABOVE-GROUND

STORAGE TANK ACT

*Enacted by Tribal Council Resolution - 9/22/97
Amendments Approved - 8/8/98*

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I. GENERAL PROVISIONS

101. PURPOSES

The Seneca Nation Council finds that the release of petroleum products and other regulated substances from underground and above-ground storage tanks presents a significant danger to the public health, welfare and environment, including the natural and cultural resources of the Seneca Nation, by contaminating surface water, groundwater and surface and subsurface soils. Therefore, it is the intent of the Seneca Nation Council to establish a program for the regulation of such storage tanks and of their installation, operation and maintenance, retrofitting, leak detection equipment, removal and closure, as well as for corrective action to be taken in the event of any releases of regulated substances, in order to protect the interests of present and future generations of the Seneca Nation.

102. DEFINITIONS

For the purposes of this chapter -

- (1) "Above-ground storage tank (AST)" means any one or combination of tanks located above ground (including any pipes connected to the tanks) that is used to contain regulated substances and that is located more than 90% above the surface of the ground (as measured by volume), including:
 - (A) a field-erected tank;
 - (B) a rebuilt tank;
 - (C) a shop-fabricated tank;
 - (D) a storage tank situated in an above-ground area (including a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated on or above the surface of the floor; and
 - (E) a pipe connected to a tank system described in clauses (A) through (D).

The term shall not include any of the following:

- (A) a farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes;
- (B) a tank used for storing heating oil for consumptive use on the premises where stored;

- (C) a stationary tank of 1100 gallons or less capacity used for storing fuel to supply stationary fuel-fired equipment through a system of fixed valves and piping;
 - (D) a storm water or waste water collection system;
 - (E) a flow-through process tank;
 - (F) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
 - (G) a production tank; and
 - (H) a pipe connected to a tank, system, trap or line described in clauses (A) through (G).
- (2) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his or her designee.
 - (3) "Attorney General" means the Attorney General of the Seneca Nation of Indians.
 - (4) "Corrective Action Plan (CAP)" means a document that is submitted to the regulatory agency for approval and that is based on the site characterization of a storage tank site. The CAP corrects soil, surface water and groundwater contamination and is implemented in order to protect human health, safety and the environment, including natural and cultural resources.
 - (5) "Cultural resource" means a place, object or natural resource of particular significance to the Seneca people's beliefs, customs or traditions.
 - (6) "Director" means the Director of the Seneca Nation Environmental Protection Department or his or her designee.
 - (7) "Environmental Protection Department (EPD)" means the Seneca Nation department responsible for implementing the environmental laws adopted by the Seneca Nation.
 - (8) "Exposure Assessment" means an assessment to determine the extent or exposure or potential for exposure of, individuals to regulated substances from a release from an underground or above-ground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain

contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

- (9) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator as required by this Act.
- (10) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground or above-ground storage tank.
- (11) "Owner" means a person who owns an underground or above-ground storage tank or a person who owned such a storage tank immediately before the storage tank was taken out of operation. A person who acquires ownership or control of property (by lease, use or other means) where a storage tank is located is the owner of the storage tank, except that the person is not an owner of an underground storage tank if the person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property.
 - (A) A person who holds indicia of ownership primarily to protect a security interest in either the petroleum underground or above-ground storage tank or in the property on which the petroleum storage tank is or was located but who does not participate in the management of the storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this Act.
 - (B) A person who holds indicia of ownership as prescribed in clause (A) and who acquires ownership or control of a petroleum storage tank through foreclosure of the property where the tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release if the person does all of the following:
 - (i) complies with the notification requirements in Section 201;
 - (ii) complies with the reporting requirements in Section 203 to the extent that the information is known to the person at the time of the report;

- (ii) temporarily or permanently closes the storage tank in accordance with this Act and regulations promulgated hereunder; and
 - (iv) divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.
 - (C) The Seneca Nation shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release where it holds indicia of ownership due to bankruptcy, foreclosure, tax delinquency, condemnation, abandonment or similar means because of its status as a governmental entity and it:
 - (i) complies with the notification requirements in Section 201;
 - (ii) complies with the reporting requirements in Section 203 to the extent that the information is known to the person at the time of the report; and
 - (iii) temporarily or permanently closes the storage tank in accordance with this Act and regulations promulgated hereunder.
 - (D) For the purpose of this Act, the terms "own" and "ownership" shall be construed according to principles of common law, as modified by these definitions, and the Seneca tradition of ownership extending only one plowshare deep shall not apply.
- (12) "Person" means any individual, public or private corporation, company, partnership, firm, association or society of persons, federal, state or local government or any of their programs or agencies, Indian tribe, including the Seneca Nation, or any of its agencies, divisions, departments, programs, enterprises or companies.
- (13) "Regulated Substance" means:
- (A) petroleum, including crude oil or any fraction thereof which is liquid at 60 degrees F. and 14.7 pounds per square inch absolute, and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel

oils, lubricants, petroleum solvents, used oils and petroleum by-products;

(B) a substance defined in Section 101 (4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601(14), but not including a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921.

- (14) "Release" means any spilling, leaking, pumping, pouring, emptying, dumping, emitting, discharging, escaping, leaching, or disposing from any underground or above-ground storage tank into groundwater, surface water or surface or subsurface soil.
- (15) "Seneca Nation" or "Nation" means either:
- (A) the political and governmental body known as the Seneca Nation of Indians; or
- (B) all land within the territorial boundaries of the Seneca Nation, including all land within the exterior boundaries of the Allegany, Cattaraugus and Oil Spring Reservations, including the City of Salamanca, and all other land over which the Seneca Nation, now or in the future, may exercise governmental jurisdiction.
- (16) "Site Characterization" means the investigation and reporting of detailed information about soil, surface water, groundwater, geology, conductivity, contaminants and other data at a storage tank site for the purpose of implementing a corrective action plan.
- (17) "Storage Tank" means either above-ground storage tank or an underground storage tank.
- (18) "Tank System" means an above tank and ancillary equipment, including piping, which is used for the storage of regulated substances.
- (19) "Underground Storage Tank (UST)" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain regulated substances and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. Such term does not include any:
- (A) farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for non-commercial purposes;

- (B) tank used for storing heating oil for consumptive use on the premises where stored;
- (C) septic tank;
- (D) pipeline facility (including gathering lines) that is:
 - (i) regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. § 1671 et seq. or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. § 2001 et seq.; or
 - (ii) an intrastate pipeline facility regulated under state laws comparable to the provisions referred to in clause (i);
- (E) surface impoundment, pit, pond or lagoon;
- (F) storm water or waste water collection system;
- (G) flow-through process tank;
- (H) liquid trap or associated gathering (lines directly related to oil or gas production and gathering operations; or
- (I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

103. APPLICABILITY; REQUIREMENT FOR PERMIT

(a) Applicability

The provisions of this Act and regulations promulgated hereunder shall apply to all persons within the Seneca Nation, including the Seneca Nation itself (to the extent that the Nation is the owner or operator of storage tanks, and not excluded under Section 102(a)(10)(C)), and to all property within the Seneca Nation.

(b) Requirement for permit

Within 90 days of the effective date of this Act, no person may install or operate a storage tank within the Seneca Nation unless that person holds a valid permit issued pursuant to Sections 205 & 206.

(c) Exclusions

The following UST systems are excluded from the requirements of this Act:

- (1) any UST system holding hazardous wastes listed or identified under Subtitle C of the Resources Conservation and Recovery Act, or a mixture of such hazardous waste and other regulated substances;
- (2) any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
- (3) equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- (4) any UST system whose capacity is 110 gallons or less;
- (5) any UST system that contains a de minimis concentration of regulated substances; and
- (6) any emergency spill or overflow containment UST system that is expeditiously emptied after use.

104. GENERAL AUTHORITIES OF THE DIRECTOR

(a) Powers and duties

In carrying out the intent of this Act, the Director is authorized to:

- (1) promulgate such regulations, with the approval of the Natural Resources Committee, as are necessary to carry out his or her functions under this Act in accordance with the provisions of Section 401;
- (2) obtain technical assistance from the U.S. Environmental Protection Agency and/or the State of New York whenever the Director finds such assistance is necessary;
- (3) require monitoring, sampling or other studies;
- (4) assess fees for the inspection of storage tanks;
- (5) conduct investigations, inspections and tests at storage tank sites to carry out the duties of this Act;

- (6) hold hearings related to any aspect of or matter within the authority of this section and, in connection therewith, compel the attendance of witnesses and the production of records;
- (7) provide to the public pertinent educational materials and information regarding storage tank issues;
- (8) issue guidelines and encourage voluntary cooperation with the provisions of this Act and any regulations promulgated hereunder;
- (9) accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government, to carry out any of the purposes of this Act in accordance with Nation law and policy.
- (10) require the owner or operator of a storage tank to perform or cause to be performed a tank and line system test to determine compliance with the standards established by the Act or regulations promulgated hereunder; and
- (11) perform such other activities as the Director may find necessary to carry out his or her functions under this Act.
- (12) recommend the terms of a proposed Memorandum of Understanding with the United States and/or the State of New York for assistance in enforcing this law, provided that any proposed Memorandum of Understanding must be approved by the Seneca Nation Council.

(b) Delegation of authority

The Director may delegate to any officer or employee of EPD such powers and duties, under this Act, except the making of regulations, as he or she may deem necessary or expedient.

105. SEVERABILITY

If any provision of this Act, or the application of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected.

II. STORAGE TANK REQUIREMENTS

201. NOTIFICATION REQUIREMENTS

(a) Existing tanks

Within 90 days from the effective date of this Act, each owner or operator of an underground or above-ground storage tank shall notify EPD, on a form to be provided by the Director, of the existence of such tank and including information on the following:

- (1) age,
- (2) size,
- (3) type,
- (4) location,
- (5) uses of tank,
- (6) type of release detection system and extent of any known soil, surface water or groundwater contamination,
- (7) material out of which the tank and piping are constructed,
- (8) tank system schematic,
- (9) name of person who installed the tank, evidence of certification to install storage tanks, and date of installation of tank, (10) Spill Prevention Control and Countermeasure Plan, and
- (11) other pertinent information as may be determined by the Director.

(b) Tanks taken out of operation

Any underground or above-ground storage tank taken out of operation after January 1, 1974 shall be removed from the ground by the owner or operator who shall notify EPD, on a form to be provided by the Director, of the existence of such tank and shall include the following information:

- (1) date the tank was taken out of operation,
- (2) age of the tank,
- (3) size,
- (4) type,
- (5) location,
- (6) type and quantity of substances stored in the tank as of the date it was taken out of operation,
- (7) factory tank design specifications,
- (8) tank system schematic, and
- (9) other pertinent information as may be determined by the Director.

(c) New tanks

After the effective date of this Act and prior to commencing installation of a storage tank, the owner or operator shall comply with the notice requirements in subsection (a).

(d) Notification by depositors

For 12 months from the effective date of this Act, any person who deposits regulated substances into a storage tank shall notify the owner or operator of the tank of the requirements of this Act.

(e) Notification by sellers

Any person who sells a tank intended to be used as an underground or above-ground storage tank shall notify the purchaser of the requirements of this Act.

(f) Notification by Clerk

The Clerk shall issue a public notice of pending permit applications and allow a 30 day public comment period.

202. INVENTORY

The Director shall prepare and maintain an inventory of all underground and above-ground storage tanks within the Seneca Nation. The inventory shall be based on the information collected pursuant to the notification requirements in Section 201.

203. PERFORMANCE STANDARDS AND OPERATION AND MAINTENANCE, LEAK DETECTION, PREVENTION, REPORTING, CORRECTIVE ACTION, CLOSURE AND FINANCIAL RESPONSIBILITY REQUIREMENTS

(a) Regulations

The Seneca Nation hereby adopts the federal underground storage tank performance standards and requirements pertaining to operation and maintenance, release detection, prevention, reporting, corrective action, closure and financial responsibility contained in 42 U.S.C. § 6991b and 40 C.F.R. part 280, as they may be amended from time to time. These requirements shall be applicable under Seneca law to all USTs within the Seneca Nation. In addition, the Director, after notice and opportunity for public comment as provided for in Section 401, may promulgate more stringent or additional requirements for USTs and may promulgate regulations for ASTs as may be necessary to protect public health, welfare, the environment, and the cultural resources of the Seneca Nation. To the extent that the Director promulgates regulations that are more stringent than the federal requirements, the more stringent regulations shall supersede the existing federal requirements.

(b) Federal requirements

The federal requirements incorporated into Seneca law pursuant to this section include the following:

- (1) performance standards for tanks, piping and spill and overflow prevention equipment (§280.20);
- (2) upgrade requirements for existing UST systems (§280.21);

- (3) operation, maintenance and repair requirements (§§280.30 - 280.33);
- (4) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment (§§280.40 - 280.45);
- (5) requirements for maintaining records of any monitoring or leak detection system, inventory control system or tank testing or comparable system (§§280.34, 280.45);
- (6) requirements for reporting and investigating releases and reporting corrective action taken in response to a release from an underground storage tank (§§280.34, 280.50 - 280.53, 280.61);
- (7) requirements for taking corrective action in response to a release from an underground storage tank (§§280.60 - 280.67);
- (8) requirements for the closure of tanks to prevent future releases of regulated substances into the environment (§§280.70 - 280.74);
- (9) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden or incipient accidental releases arising from operating a UST (§§280.90 - 280.115); and
- (10) requirements for deferred UST systems (§280.11).

Reports of releases or suspected releases made pursuant to subsection (b)(6) shall be made to the Director within 24 hours in person, by telephone, by fax or by electronic mail, and shall be followed within 14 calendar days by a written report. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance involved, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report, and any other information required by the Director.

204. ABOVE-GROUND STORAGE TANK REQUIREMENTS

(a) General Requirements

The owner and operator of any AST shall comply with the following criteria:

- (1) any new AST (brought into use after the effective date of this Act) must be designed to prevent releases due to corrosion or structural failure for the operational life of the tank;
- (2) any new AST must be made of a material used in the construction of lining that is compatible with the regulated substance to be stored;
- (3) any new AST must contain release detection and prevention devices designed utilizing the best available technology;
- (4) any existing AST must comply with any upgrade requirements promulgated by the Director;
- (5) all ASTs must comply with applicable fire codes and national fire code standards;
- (6) all ASTs must comply with applicable federal laws, regulations and design and operational standards, including the applicable requirements of 40 C.F.R. part 112; and
- (7) all owners or operators of ASTs must submit a Spill Prevention Control and Countermeasure Plan.

(b) Additional Requirements

In addition, new ASTs shall comply with the following requirements, to the extent that they can be made applicable to ASTs:

- (1) manufacturer instructions regarding operation, maintenance and repairs;
- (2) federal recordkeeping requirements applicable to USTs, see Section 203(b)(5);
- (3) federal reporting and investigation requirements applicable to USTs, see Section 203(b)(6);
- (4) federal corrective action requirements applicable to USTs, see Section 203(b)(7);
- (5) federal closure requirements applicable to USTs, see Section 203(b)(8); and

- (6) federal financial responsibility requirements applicable to USTs, see Section 203(b)(9).

205. ISSUANCE OF STORAGE TANK PERMIT

(a) Contents of application

In order to receive a storage tank permit required under Section 103, each owner or operator of a storage tank shall submit to EPD, together with the notification form required under Section 201, the following items:

- (1) proof of financial responsibility, pursuant to Section 203 and any regulations promulgated under this Act;
- (2) a certificate attesting that the applicant is in compliance with all applicable laws of the Nation regulating business or commercial activities; and
- (3) proof of ownership of or authorization to use the land under or upon which the storage tank is or is to be located.

(b) EPD review

EPD shall review the permit application and forward it to the Planning Commission, or its successor, with a recommendation whether to issue or deny the permit.

(c) Existing tanks

Provided that all the information required by subsection (a) has been submitted and is complete, the Planning Commission, or its successor, shall issue a permit to the owner or operator of an existing storage tank.

(d) New tanks

The Planning Commission, or its successor, shall make a final decision whether to issue or deny a permit to the owner or operator of a new storage tank, based upon the recommendation of EPD and the Planning Commission's best judgment.

(e) Modifications of permits

The owner or operator of a storage tank system shall notify EPD of any modifications intended to be made to a storage tank system or to the contents thereof and shall propose changes to its permit reflecting such modifications. Such modifications may be made only upon review by EPD and approval by the Planning Commission, or its successor, of a modified permit.

(f) Judicial review

Judicial review of any final decision of the Planning Commission or its successor regarding issuance of a permit or approval of a modified permit may be had pursuant to Section 402.

206. INSTALLATION OF STORAGE TANK SYSTEMS

Any person installing a storage tank system or portion of such system must have the appropriate certification for installing storage tank systems and for conducting any work regarding those systems and provide proof of certification to the EPD prior to installation. Any person who installs a storage tank system or portion of such system who does not possess the appropriate credentials and/or does not conduct the installation according to industry standards is subject to a penalty pursuant to Section 303.

207. RIGHT TO INSPECT RECORDS, TANKS AND EQUIPMENT

(a) Inspections, access and information

In order to develop rules, conduct studies or enforce the provisions of this Act, the Director may request and an owner or operator of a storage tank shall comply with the following:

- (1) furnish to EPD information relating to the storage tank and its associated equipment and contents;
- (2) conduct monitoring or testing;
- (3) permit the Director to have access to the storage tank site to conduct monitoring and testing of tanks or surrounding soils, air, surface water or groundwater and to take corrective action;
- (4) permit the Director to inspect and copy all records relating to storage tanks; and
- (5) permit the Director to inspect and obtain samples of regulated substances contained in the storage tanks.

(b) Conduct of inspections

The Director shall conduct all inspections permitted under subsection (a) at a reasonable time and shall complete such inspections with reasonable promptness.

208. CONFIDENTIALITY OF RECORDS

(a) Confidentiality

Records or other information furnished to or obtained by the Director concerning regulated substances are available to the public, except that any records and information that relate to the trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of EPD in the administration of this Act unless owner or operator expressly agrees in writing to their publication or availability to the public. Notwithstanding provisions to the contrary, information regarding the nature and ~~qt~~quality of releases from storage tanks otherwise reportable pursuant to this chapter shall be available to the public, and records, reports, documents or information may be disclosed to other officers, employees, or authorized representatives of the Seneca Nation concerned with carrying out or assisting in carrying out this Act or when relevant in any proceeding taken under this Act.

(b) Penalties

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

209. AUTHORITY OF THE DIRECTOR TO TAKE CORRECTIVE ACTION

(a) Corrective actions

The Director is authorized to:

- (1) require the owner or operator of a storage tank to undertake corrective action with respect to any release of a regulated substance from that storage tank, pursuant to a corrective action plan submitted and approve under the requirements of this Act;
- (2) undertake corrective action with respect to any release of a regulated substance into the environment from a storage tank, including requesting the US EPA or the New York Department of Environmental Conservation to assist in undertaking such corrective action, but only if such action is necessary, in the judgment of the Director, to protect public health and the environment and one or more of the following situations exist:
 - (A) No person can be found, within 90 days or such shorter period as may be necessary, to protect public health and the environment, who is --

- (i) an owner or operator of the tank concerned;
 - (ii) subject to corrective action requirements under this Act; and
 - (ii) capable of carrying out such corrective action properly.
- (B) A situation exists which requires prompt action by the Director to protect public health and the environment.
- (C) Corrective action costs at a storage tank site exceed the amount of coverage required under this Act and, considering the class or category or tank from which the release occurred, expenditures from the Leaking Storage Tank Fund established under Section 502 are necessary to assure an effective corrective action.
- (i) The owner or operator of the tank has failed or refused to comply with an order of the Director under this Act or an order of the Administrator under the Resource Conservation and Recovery Act to comply with corrective action regulations.

(b) Priority for corrective actions

The Director shall give priority in undertaking corrective actions under this section, and in issuing orders requiring owners or operators to undertake such actions, to releases of regulated substances from storage tanks that pose the greatest threat to public health and the environment.

(c) Corrective action orders

The Director may issue orders to the owner or operator of a storage tank to carry out subsection (a)(1) of this section or to carry out corrective action regulations promulgated under this Act. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under Section 302.

(d) Allowable corrective actions

The corrective actions undertaken by the Director under subsection (a) may include temporary or permanent relocation of residents and the establishment of alternative household or public water supplies. In connection with the performance of any corrective action under subsection (a), the Director may undertake an exposure assessment. The costs of any such assessment may be treated as corrective action for purposes of subsection (e).

(e) Recovery of costs

(1) In general - Whenever costs have been incurred by the Director for undertaking corrective action or enforcement action with respect to a release from a storage tank, the owner or operator of such tank shall be liable to the Seneca Nation for such costs. In determining the equities for seeking the recovery of costs, including administrative costs, under this paragraph, the Director may consider the amount of financial responsibility required to be maintained under this Act and any regulations promulgated hereunder.

(2) Effect on liability - No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any storage tank, or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this subsection. Nothing in this subsection, however, shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section, nor shall it bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

III. ENFORCEMENT

301. GENERAL ENFORCEMENT AUTHORITY

(a) In general

Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement of this Act, regulations promulgated under this Act, or orders issued pursuant to this Act, the Director may:

- (1) issue and serve on such person an order requiring such person to comply with such requirement or suspending or revoking a storage tank permit;
- (2) bring a civil action in accordance with Section 303(a); and/or
- (3) refer any criminal enforcement action or portion of such action to the US. EPA Regional Administrator for Region 2.

(b) Continual violations

In addition, when a person has continually violated any requirements or prohibitions of this Act, the regulations promulgated hereunder, or orders issued pursuant to this Act, on more than one occasion or has continually refused to comply with any such requirements or prohibitions, such person may be prohibited from conducting business within the Seneca Nation upon a hearing in the Seneca Nation's Peacemakers' Court.

302. ORDERS TO COMPLY

(a) Requirements for orders to comply

The Director may order any owner or operator of a storage tank facility, or any other person subject to any requirement under this Act or regulations promulgated hereunder, to comply with such requirements, and also may suspend or revoke a storage tank permit for failure to comply with any such requirement. An order to comply or notice of suspension or revocation of a storage tank permit shall state with reasonable specificity the nature of the violation or reason for suspension or revocation of the permit, shall state that the alleged violator is entitled to an administrative hearing pursuant to regulations promulgated by the Director under Section 304 if such hearing is requested in writing within 30 days after the date of issuance of the order, and, in the case of an order to comply, shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order or notice shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order or notice may be conditional and require a person to refrain from particular acts unless certain conditions are met. If the order or notice is issued to a corporation, a copy shall be sent to the appropriate corporate officers. No order to comply or notice of suspension or revocation shall affect or limit the Director's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act.

(b) Emergency compliance orders

Notwithstanding any other provision of this section, if the Director determines that a storage tank is presenting an imminent and substantial threat to the public health, welfare or environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of the public health, welfare or environment by commencement of an action under Section 303, the Director may issue such orders as may be necessary to protect the public health, welfare or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days.

(c) Enforcement of compliance orders

Orders of the Director shall be enforced by EPD, Seneca Nation Law Enforcement Officers, the Seneca Nation Health Department and the Seneca Nation Department of Justice. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to entering upon any property or establishment believed to be violating the order and demanding compliance, and terminating part or all of the operations of a storage tank system that is out of compliance. The Director also may enter into a memorandum of agreement with the US

EPA, the New York Department of Environmental Conservation, or both, for assistance in undertaking enforcement actions under this Act.

(d) Injunctive relief

Notwithstanding any other provision of this section, the Director may seek injunctive relief pursuant to Section 303(a) to restrain any person who causes an imminent and substantial threat to the public health, welfare, environment, or cultural resources of the Seneca Nation.

303. JUDICIAL ENFORCEMENT

(a) Civil judicial enforcement

The Director may request the President to authorize the Attorney General to file an action pursuant to this Act for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in a maximum amount of \$10,000 per tank per day of violation in any of the following instances:

- (1) whenever a person has violated, or is in violation of, any provision of this Act, including, but not limited to, a regulation adopted pursuant to this Act, a permit or order issued pursuant to this Act, or a filing reporting or notice requirement under this Act;
- (2) whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities;
- (3) whenever a person submits false information or fails to notify EPD as required under this Act or regulations promulgated hereunder; and
- (4) whenever a person is creating an imminent and substantial endangerment to the public health, welfare, environment or cultural resources of the Seneca Nation, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment is caused by a violation, as specified in paragraphs 1 and 2.

(b) Criminal penalties

Any person who intentionally:

- (1) violates the provisions of this Act, including but not limited to a regulation or plan adopted pursuant to this Act, a permit or order issued pursuant to this Act or a filing, reporting or notice requirement under this Act;

- (2) makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report or other document required pursuant to this Act or regulations adopted hereunder; or
- (3) falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act or regulations adopted hereunder;

shall, under conviction, be punished by a fine in a maximum amount of \$10,000 per tank per day of violation or imprisonment for not more than 180 days per tank per day of violation or both, or be subject to any other penalty imposed by the court that is available under Seneca Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the EPA Regional Administrator for Region 2 pursuant to Section 301(a). For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in Section 102, any responsible corporate officer.

(c) Jurisdiction and venue

Any action under this section may be brought in the Peacemakers' Court for the venue where the person in question resides or the tank at issue is located, and the court shall have jurisdiction to restrain such violation, require compliance, assess and collect penalties and fees, and award any other appropriate relief.

(d) Calculation of penalties

(1) In determining the amount of a civil penalty assessed under this section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant.

(2) All penalties collected pursuant to this section shall be deposited in the Storage Tank Program Account established under Section 503 for use by the Director to finance compliance and enforcement activities under this Act. The Director shall report annually to the Budget and Finance Committee for review by the Seneca Nation Council on the sums deposited into the fund, including the sources and the proposed and actual uses thereof.

(3) In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused, perform community service, or conduct supplemental environmental projects.

304. ADMINISTRATIVE HEARINGS

The Director shall, by regulation, establish procedures for administrative hearings of appeals of actions taken under Section 302(a) (orders to comply and suspension or revocation of permits). Until the Director establishes such procedures and appoints a qualified presiding officer, appeals shall be made directly to the Peacemakers' Court for the venue where the appellant resides or the storage tank at issue is located.

IV. RULEMAKING AND JUDICIAL REVIEW

401. RULEMAKING AND OTHER ADMINISTRATIVE PROCEDURES

(a) Rulemaking

(1) Notice of any proposed regulation shall be published in a newspaper of general circulation for the area of the Seneca Nation that is concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; shall allow any person to submit written comments, data or documentary information; and shall give interested persons an opportunity to present orally their views.

(2) The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant written comments submitted during the comment period.

(b) Administrative subpoenas

(1) In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative order under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

(2) Upon a showing satisfactory to the Director by the owner or operator of a storage tank that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential pursuant to Section 207.

(3) Witnesses summoned shall be paid the same fees and mileage that are paid in the Nation's courts. In case of contumacy or refusal to obey a subpoena, the Peacemakers' Court where such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director

and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Peacemakers' Court where such person is found, resides or transacts business, naming as defendant the Director in his or her official capacity and not in any other manner; in any such action, relief will be limited to declaratory relief.

402. REVIEW IN THE NATION'S COURTS

(a) Petitions for review

A petition for review of any final action taken by the Director under this Act, including but not limited to promulgation of regulations and standards and issuance of orders to comply (but not including administrative subpoenas under Section 401), shall be brought in the Seneca Nation Peacemakers' Court. The petition shall be filed within 60 calendar days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 calendar days after such grounds arise.

(b) Limitations on review

(1) If judicial review of a final action of the Director could have been obtained under subsection (a) of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

(2) With respect to any regulations promulgated under this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation or other action, the Director may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Director refuses to convene such a proceeding, the person may seek judicial review of such refusal pursuant to subsection (a). Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three months.

(3) Except as otherwise expressly allowed by Seneca law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the court may invalidate the final action only if the errors were so serious and related to matters of such central relevance to the

action that there is a substantial likelihood that the action would have been significantly changed if such errors had not been made.

(c) Standards for review

In reviewing any final action of the Director taken pursuant to this Act, the court may reverse any such action that it finds to be:

- (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
- (2) in excess of statutory jurisdiction, authority, or limitations or short of statutory right;
- (3) without observance of procedure required by law; or
- (4) unsupported by substantial evidence.

V. FUNDING

501. ANNUAL TANK FEES

Each owner or operator of an above-ground or underground storage tank that is subject to regulation under this Act shall pay annually to EPD a fee of \$125 for each tank. This fee shall be included with the permit application filed pursuant to Section 205, and shall be due every year thereafter 12 months from the date of filing. The fees collected shall be deposited in the Storage Tank Program Account established under Section 503.

502. TANK REMOVAL, INSTALLATION AND CLEAN-UP MONITORING FEES

Each storage tank owner shall pay to EPD a tank removal and installation monitoring fee of \$150 per day per tank for each removal or installation performed or supervised by EPD. In the event that remediation is required, the owner shall pay an additional \$150 monitoring fee for each site per day. The fees collected shall be deposited in the Storage Tank Program Account established under Section 503.

503. STORAGE TANK PROGRAM ACCOUNT

Monies derived from fees and penalties imposed under this Act shall be available solely for the administration and implementation of this Act and the regulations promulgated hereunder. Such funds shall be deposited into a duly established account and expended by the Director for the use of the Storage Tank Program. Any monies contained in said account at the end of the fiscal year shall not revert to the General Fund and shall remain available for appropriation as provided in this section.

504. LEAKING STORAGE TANK FUND

There is hereby established a Leaking Storage Tank Fund to be utilized by the Director at his or her discretion to carry out corrective actions required under this Act and regulations promulgated hereunder and to remove abandoned tanks and clean up storage tank sites. Monies shall be deposited into this fund from any appropriations authorized by the Seneca Nation Council, available state, federal or other grants, corrective action reimbursements, or donations.

Seneca Nation of Indians

President - Michael W. Schindler
Clerk - Geraldine Huff

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Treasurer - Rae L. Snyder

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AT THE REGULAR SESSION OF COUNCIL
OF THE SENECA NATION OF INDIANS
HELD ON AUGUST 8, 1998, AT THE
WILLIAM SENECA BUILDING ON THE
CATTARAUGUS INDIAN RESERVATION,
IRVING, NEW YORK 14081

EXECUTIVES PRESENT:

PRESIDENT	MICHAEL W. SCHINDLER
CLERK	ABSENT
TREASURER	RAE L. SNYDER

ACCEPTANCE OF AMENDMENTS / REVISIONS TO THE SNI UNDERGROUND AND ABOVE-
GROUND STORAGE TANK ACT ENACTED 9/22/97

Motion by Stewart Redeye, Seconded by Tyler Heron, that Tribal Council
approve the following resolution:

WHEREAS, the Natural Resources Committee has reviewed and approved
necessary amendments/revisions to the Underground and Above-Ground
Storage Tank Act enacted by Council on 9/22/97,

NOW, THEREFORE, BE IT RESOLVED, that these amendments/revisions are
hereby accepted and effective as of this date, and

BE IT FURTHER RESOLVED, that all storage tank permit applications
after the effective date of these amendments shall be subject to
these amendments.

ALL IN FAVOR

MOTION CARRIED

CERTIFICATION


I hereby certify the foregoing extract is a true and correct
copy from the minutes of the Regular Session of Council of the Seneca
Nation of Indians held on the Cattaraugus Indian Reservation,
original of which is on file in the Clerks Office of the Seneca
Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and
cause the seal to be affixed at the William Seneca Administration
Building on the Cattaraugus Indian Reservation, Irving, New York on
the 12th day of August 1998.

REGULAR COUNCIL SESSION
AUGUST 8, 1998
PAGE 2

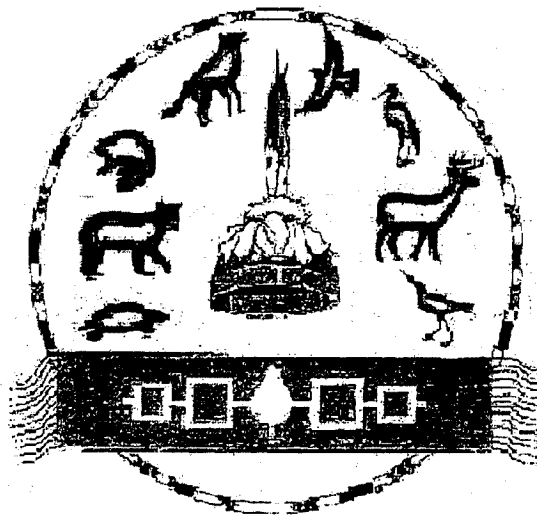
ACCEPTANCE OF AMENDMENTS / REVISIONS TO THE SNI UNDERGROUND AND ABOVE-
GROUND STORAGE TANK ACT ENACTED 9/22/97. (CONTINUED)

ATTEST:


GERALDINE HUFF, CLERK
THE SENECA NATION OF INDIANS

(S E A L)

SENECA NATION OF INDIANS
ENVIRONMENTAL PROTECTION
DEPARTMENT



WASTE DISPOSAL ORDINANCE

APPROVED OCTOBER 14, 1989
AMENDED APRIL 23, 1992
AMENDED JUNE 13, 1992



Seneca Nation of Indians

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President - Barry E. Snyder, 11076 Lakeshore Rd., Irving, N.Y. 14081
Treasurer - Robert C. Hoag, 464 Fair Oak Street, Salamanca, N.Y. 14779
Clerk - Lois A. Green, Versailles Plank Rd., Versailles, N.Y. 14091

At the Regular Session of Council of the Seneca Nation of Indians held on March 21, 1981, at the New Office Building on the Allegany Indian Reservation, Salamanca, New York, 14779.

PRESENT: President - Barry E. Snyder
 Clerk - Lois A. Green
 Treasurer - Robert C. Hoag

ORDINANCE - USE AND DISPOSAL OF DANGEROUS CHEMICALS

MOTION by Stephen Gordon, Seconded by Wayne Printup, to adopt the following resolution:

WHEREAS, the Seneca Nation Tribal Council has the authority and responsibility to enact ordinances from time to time to protect the public welfare of tribal members, and

WHEREAS, a dangerous situation has arisen affecting the health and safety of residents of the Cattaraugus and Allegany Reservations, and

WHEREAS, the use of dangerous chemicals, such as pesticides, weed killers, etc., are not presently regulated,

NOW, THEREFORE, BE IT RESOLVED, that an ordinance regulating the use and disposal of any dangerous chemicals by a person, persons or corporation, within the boundaries of the Cattaraugus and Allegany Reservations be established,

AND BE IT FURTHER RESOLVED that the appropriate mechanisms be a part of the ordinance which will enforce and penalize any violators of the ordinance.

MOTION CARRIED.

JAN 3 1994

SNL Clerk's Ofc.
Catt. Res.

WASTESEW.ORD/D-16

WASTE DISPOSAL ORDINANCE

Section I. Definitions.

(a) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, or pollution control facility and other destructive, injurious or unsightly discarded material, including, but not limited to, solid liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities; and,

(b) any solid, liquid, semisolid, or contained gaseous material which posed a substantial present or potential hazard to human health or the environment, or may cause an increase in mortality or increase in serious illness.

(c) "Council" means the Council of the Seneca Nation of Indians.

(d) "Waste facility" means any facility for the separation, transfer, processing, treatment or disposal of waste, including but not limited to facilities which mix sewage sludge with other materials to produce a commercial product.

(e) "Reservation" means the Allegany, Cattaraugus and Oil Spring Reservations.

Approved Oct. 14, 1989 Amendments April 23, June 13, 1992

WASTE DISPOSAL ORDINANCE

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Section 2. Littering and dumping.

No person shall abandon, dump, throw or deposit any solid waste on the Reservation, except at specific locations designated by Council as a public dumping ground.

Section 3. Waste disposal.

No person shall dispose, or authorize to dispose, of any solid waste on the Reservation in such a manner as to:

- (a) Create a breeding or harborage place for insects or rodents; or
- (b) Create an unsightly appearance, or source of noxious odor, or both

Section 4. Prohibition on waste facilities.

No person shall construct, operate or maintain any waste facility on the Reservation, provided that this prohibition shall not apply to any public dumping ground approved in accordance with Section 2 of this ordinance.

Section 5. Violations - Remedies.

(a) The Nation may bring an action in the Peacemakers Courts against any person for violation for this Ordinance.

WASTE DISPOSAL ORDINANCE

Page 3

or to enjoin violations of this Ordinance, or both. The action shall be initiated by the filing of a written complaint with the court by the tribal prosecutor sworn to by a person having personal knowledge of the charged violation, or by a Marshall, Seneca Nation Law Enforcement Officer, or Conservation Officer having personal knowledge of the charged violation. The complaint shall set forth the essential facts charging that a named individual has violated this Ordinance. Such action, including any appeal which is taken from the decision of the Peacemakers court, shall be governed by the Seneca Nation of Indians Civil Procedure Rules.

(b) Any person found to have violated this Ordinance shall pay the Nation the cost of disposing of the solid waste which is the subject of the violation in a lawful manner.

(c) Any person found to have violated this Ordinance shall pay a fine of:

1) Not more than \$5,000.00 for a Section 2 violation,
- and court costs.

2) Not more than \$5,000.00 for a Section 3 violation,
and court costs.

Approved Oct. 14, 1989 Amendments April 23, June 13, 1992

WASTE DISPOSAL ORDINANCE

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(d) Any person found to have violated this Ordinance may be enjoined from further violating the Ordinance.

(e) Any person found to violate this Ordinance may be excluded from the Reservation.

(f) Upon application of the Nation at the commencement of any action brought by it under this Section, the Peacemakers Court may issue an order *ex parte* authorizing the Nation to seize equipment, vehicles, or other paraphernalia used to transport or deliver solid waste in violation of this Ordinance. The Nation shall dispose of any solid waste which is seized in a lawful manner, and shall store the seized items subject to further order of the Peacemakers Court. Notice of the seizure and a date for the Peacemakers Court to determine the disposition of the seized items shall be served upon the defendant simultaneously with the complaint. The defendant from whom the equipment, vehicles, or other paraphernalia is seized shall have the opportunity to redeem the seized items at the hearing on their disposition by paying into the Peacemakers Court their appraised value, which the court shall hold pending final judgement. If the

Approved Oct. 14, 1989 Amendments April 23, June 13, 1992

WASTE DISPOSAL ORDINANCE

Page 5

seized items are not redeemed by the defendant, the Peacemakers Court shall order that these items be stored by the Nation pending its final decision.

(g) Upon final judgment in the case, the Peacemakers Court shall dispose of such monies paid into the Peacemakers Court pursuant to Section 3(f) of this ordinance by first paying to the Nation all or such part of the monies as may be necessary to satisfy the judgment as entered, and thereafter remitting any excess to the defendant, provided that the defendant shall be liable to the Nation for any deficiency between the monies paid into the Peacemakers Court and the amount of the judgment. If the seized items have not been redeemed pursuant to Section 3(f) of this Ordinance, and the defendant does not satisfy the judgment as entered within 5 days of its entry, the Court shall auction the seized items and shall dispose of the proceeds from the auction in accordance with this section, provided that the defendant shall be liable to the Nation for any deficiency between the proceeds from the auction and the amount of the judgment. The Peacemakers Court shall order that the seized items be returned to the defendant if the judgment entered is satisfied within 5 days of its entry.

Approved Oct. 14, 1989 Amendments April 23, June 13, 1992

WASTE DISPOSAL ORDINANCE

Page 6

Section 6. Enforcement.

The Marshals, officers of the Seneca Nation Law Enforcement Department, and Conservation Officers are authorized to enforce this Ordinance.

Section 7. Separability.

If any provision of the ordinance or its application to any person or circumstances is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

Section 8. Effective date.

This ordinance shall be effective upon enactment.

Section 9. Remedies not exclusive.

The remedies provided for pursuant to the Ordinance are not exclusive, and shall be in addition to such remedies as are, or may be, available to the Nation under common law.

Approved Oct. 14, 1989 Amendments April 23, June 13, 1992



The Seneca Nation of Indians

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Received

JAN 3 1994

SNI Clerk's Ofc.
Catt. Res.

PRESIDENT - Calvin "Kelly" John, Rt. 417, P.O. Box 213, Stearnburg, NY 14763
CLERK - Maribel Printup, P.O. Box 533, Salamanca, NY 14779
TREASURER - Dennis M. Lay, P.O. Box 26, Mile Block Road, Lawton, NY 14091

At the Regular Session of Council of the Seneca Nation of Indians, held June 13, 1992, at the William Seneca Administration Building on the Cattaraugus Indian Reservation, Irving, New York 14081

EXECUTIVES PRESENT:

PRESIDENT	-	CALVIN JOHN
TREASURER	-	DENNIS M. LAY
ACTING CLERK	-	SHELLEY R. HUFF

WASTE DISPOSAL ORDINANCE/AMENDMENT/APPROVAL

MOTION: by Merle Watt, seconded by William Abrams, to approve the amendment to the Waste Disposal Ordinance as follows:

Add a new section 1(d) to read as follows:

(d) "Waste facility" means any facility for the separation, transfer, processing, treatment or disposal of waste, including but not limited to facilities which mix sewage sludge with other materials to produce a commercial product.

Add a new section 4, as follows:

(4) Prohibition on waste facilities.

No person shall construct, operate or maintain any waste facility on the Reservation, provided that this prohibition shall not apply to any public dumping ground approved in accordance with Section 2 of this ordinance.

2-Opposed

MOTION CARRIED

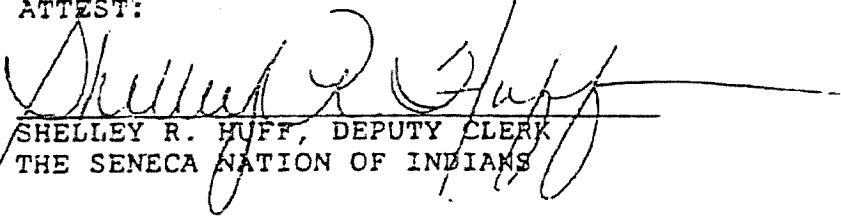
CERTIFICATION

I hereby certify that the foregoing extract is a true and correct copy from the Minutes of the Regular Session of Council of the Seneca Nation of Indians held on June 13, 1992, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

WASTE DISPOSAL ORDINANCE/AMENDMENT/APPROVAL
REGULAR COUNCIL SESSION
JUNE 13, 1992
PAGE 2

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and cause the seal to be affixed at the William Seneca Administration Building on the Cattaraugus Indian Reservation, Irving, New York, on the 15th day of June, 1992.

ATTEST:

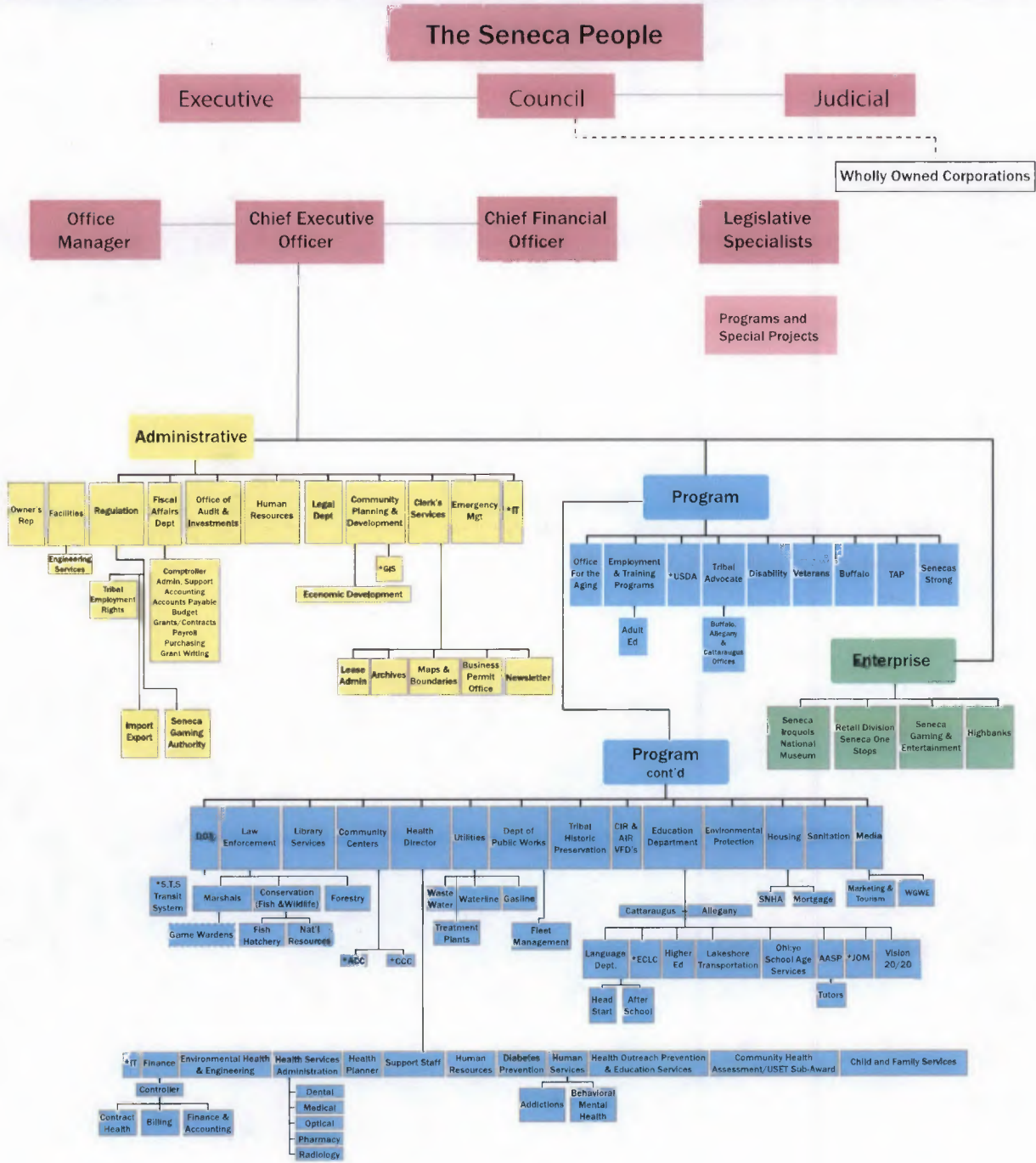
A handwritten signature in cursive script, reading "Shelley R. Huff", is written over a horizontal line. The signature is written in dark ink and extends to the right of the line.

SHELLEY R. HUFF, DEPUTY CLERK
THE SENECA NATION OF INDIANS

EXHIBIT 4

**SENECA NATION OF INDIANS
ORGANIZATIONAL CHART**

SENECA NATION DEPARTMENTAL ORGANIZATIONAL CHART



*ECLC: Early Childhood Learning Center
 *IT: Information Technology
 *GIS: Geographic Information Services
 *ACC: Allegany Community Center
 *CCC: Cattaraugus Community Center
 *USDA: United State Department of Agriculture
 *SNHA: Seneca Nation Housing Authority
 *JOM: Johnson O'Malley
 *S.T.S: Seneca Transit System

Seneca Nation of Indians Environmental Protection Department

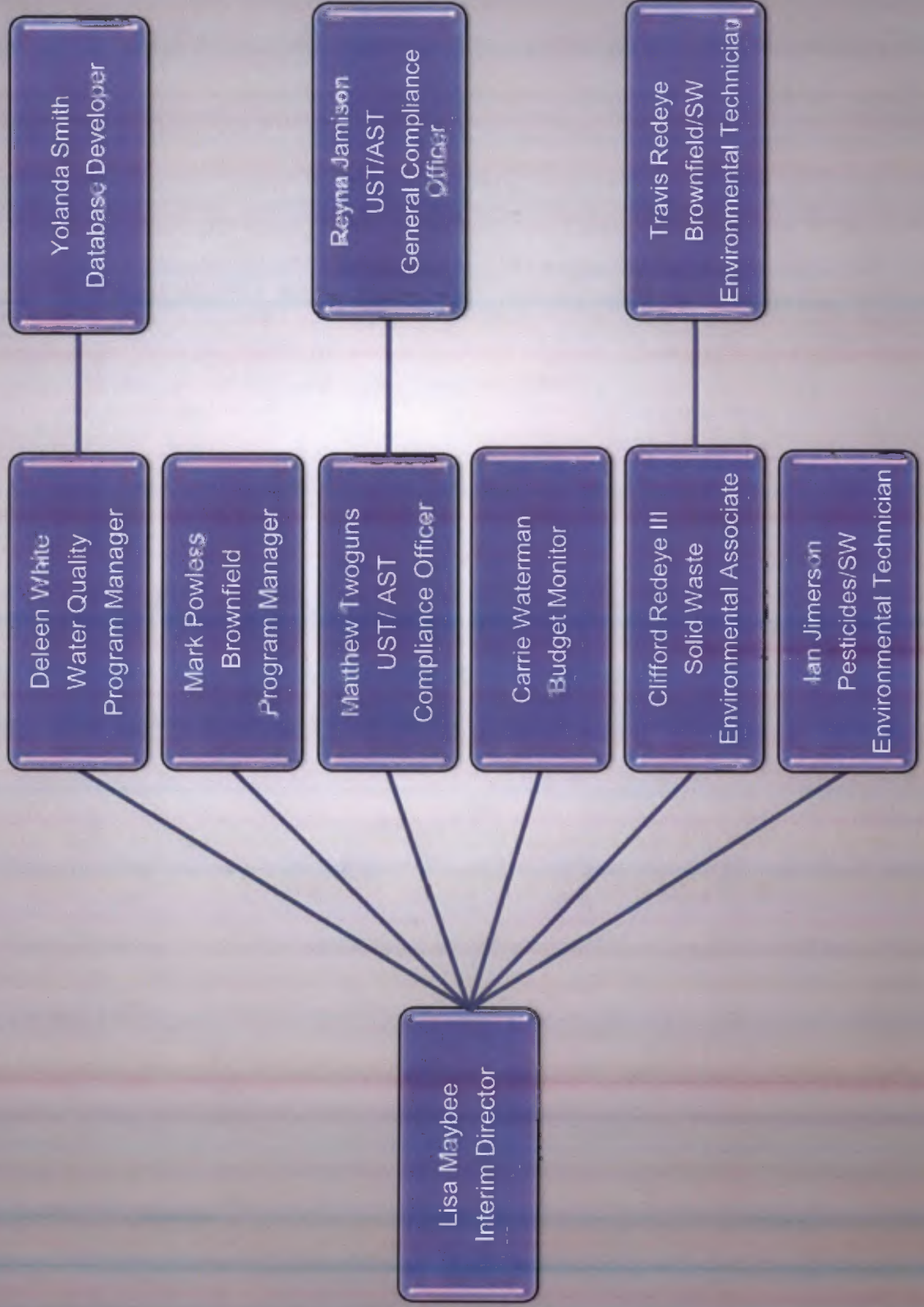


EXHIBIT 5
EPD STAFF RESUMES

LISA MAYBEE

12504 Longhouse Road, Lawtons, NY 14091 · (716) 698-2543

Lisa.Maybee@sni.org

Energetic, motivated, and personable professional with a Bachelor of Science degree and 25 years of program planning, development, and implementation experience. Encourages and supports self-advancement through training and education. Demonstrates efficiency in computer skills and welcomes advancing technologies while being mindful of Seneca traditional philosophies. Diplomatic and tactful with community members, professionals, and government officials at all echelons. Advocate for community-based youth and adult athletic programs. Accustomed to handling sensitive, confidential records. Demonstrated history of enforcement and compliance of Seneca Nation and federal regulatory standards.

EXPERIENCE

1993 – 2004, 2016 – PRESENT

ENVIRONMENTAL PROTECTION DEPARTMENT DIRECTOR, SENECA NATION OF INDIANS

Serve as executive in charge of the Environmental Protection Department of the Seneca Nation of Indians. Manage team of environmental professionals and contract staff with responsibility for implementing all applicable environmental law and regulations. Responsible for scientific assessments performed by the office, corrective actions taken, and setting Seneca Nation policy on environmental protection. Report to Nation's executive and legislative leaders on issues of environmental protection. Represent the Environmental Protection Department to other tribal, state, and federal environmental agencies, enrolled members of the Seneca Nation of Indians, and the public at large.

2014 – 2016

VETERANS DEPARTMENT DIRECTOR, SENECA NATION OF INDIANS

Serve as executive in charge of the Veterans Department of the Seneca Nation of Indians. Assist, counsel, and advocate for veterans, members of the armed services, their families and survivors regarding rights and benefits, including matters pertaining to education, military law, employment and reemployment, health, medical, and rehabilitation services and facilities, and the provisions of law relating to veterans' rights and privilege. Supervise, prepare, and process claims, liaise with public and private agencies which provide benefits for veterans, disseminate information to veterans, their families and survivors, and make personal appearances before veterans and civil organizations. Supervise the operations of the Veterans Department.

2004 – 2014

ENVIRONMENTAL PROJECT MANAGER II, SENECA NATION OF INDIANS

Scheduled and conducted program activities under operating grants for the department. Prepared monitoring reports for grant activities. Assisted with and conducted analytical testing for remediation activities and human health effects. Coordinated field activities conducted by the department, contractor, or other entity as the on-site manager. Assisted in the preparation of reports in prosecuting violators in Peacemakers Court. Assisted in the development of

permits, permit limitations, monitoring schedules and requirements for industrial and commercial activities. Worked collaboratively with United States government and New York State officials. Assisted with and conducted environmental impact assessments for permitted commercial and industrial activities.

1987 – 1993

ENVIRONMENTAL HEALTH TECHNICIAN, SENECA NATION OF INDIANS

Conducted water sampling tests including monthly bacteriological assay of community water systems, individual water systems by request or referral, and occasionally for specific heavy metals and bacteria (*giardia lamblia*), wastewater, inorganics, organics and petroleum hydrocarbons in surface and groundwater. Implemented radon testing program and issued recommendations for mitigation. Coordinated rabies vaccination clinic including rabies investigations. Implemented and oversaw injury surveillance and injury prevention programs for the Seneca Nation. Built familiarity with OSHA requirements and educated public and health department employees on same. Conducted lead poisoning investigations, carbon monoxide screening, vector control, food service inspections, home surveys, smoke alarm safety program. Gathered material safety data sheets for hazard communication. Submitted monthly health department reports. Participated in various EPA and IHS trainings and workshops, including on radon mitigation, infectious waste management, and environmental health.

1986 – 1989

SQUAD LEADER, U.S. MARINE CORPS RESERVE

Assigned supply sergeant billet; responsible for Marines' accountability, performance evaluation and readiness; conducted deployment drills; responsible for maintaining squad tactical readiness; conducted gear and personnel inspections as required.

1982 – 1986

REGIONAL SUBSISTENCE ITEM MANAGER, U.S. MARINE CORPS

Direct supervision of subsistence personnel; responsible for the monthly perishable purchase for the eastern recruiting region and bi-weekly produce order; responsible for the subsistence division fiscal audit consisting of over a million-dollar budget.

SERVICE COMPANY ADMINISTRATIVE CLERK, U.S. MARINE CORPS

Accountability of company personnel; direct link from battalion to unit regarding training activities and correspondence; systematic filing of confidential records, battalion orders and policies and procedures; company orders and policies and procedures; direct incoming and outgoing calls.

EDUCATION

BACHELOR OF SCIENCE IN ENVIRONMENTAL SCIENCE,

STATE UNIVERSITY OF NEW YORK AT FREDONIA

CERTIFICATE, EPA WATER QUALITY STANDARDS ACADEMY

Completed EPA's classroom academy course for water quality standards and criteria programs.

HONORS

- Meritorious Promotion to the rank of Private First Class
- Meritorious Promotion to the rank of Lance Corporal
- Meritorious Promotion to the rank of Corporal
- Meritorious Promotion to the rank of Sergeant
- Marine of the Month
- Marine Non-Commissioned Officer of the Quarter
- Meritorious Mast
- Certificate of Commendation
- Good Conduct Medal, 1st Award
- Letter of Excellence
- Selected to participate on the US Marine Corps, Eastern Region and All-Marine Women's Softball Team
- Honorable Discharge
- Indian Health Service, Nashville Area Office, Outstanding Tribal Health Employee (First Pilot project for Radon Investigation & Mitigation in Indian Country)
- Indian Health Service, National Award, Outstanding Tribal Health Employee (Water Study resulting in a Congressional Appropriation for a Community Drinking Water System)
- USEPA's Environmental Quality Award

DELEEN WHITE

PO Box 205, Gowanda, NY 14070 · (716) 770-6779

Deleen.White@sni.org

EXPERIENCE

02/2014 – PRESENT

WATER QUALITY PROGRAM MANAGER, SENECA NATION OF INDIANS

- Responsible for administering and coordinating all Water Quality Program activities, developing Program Management Plans, and designing new program initiatives.
- Conduct water quality assessments, inspections, and corrective actions.
- Develop scopes of work for and coordinate contractor services for water quality program.
- Brief and prepare written reports to the Environmental Program Department Director and to Grantors on program status and progress towards grant goals.

12/2012 – 02/2014

ENVIRONMENTAL TECHNICIAN, SENECA NATION OF INDIANS

- Assisted all Environmental Protection Department Program Managers with duties in their respective fields, gaining a broad understanding of the Seneca Nation's environmental programs and applicable environmental law and regulations.
- Implemented a wide variety of environmental programs, including developing and leading a recycling initiative.

12/2010 – 11/2012

ADMINISTRATIVE ASSISTANT TO THE TREASURER, SENECA NATION OF INDIANS

- Supported Chief Financial Officer with daily operational functions.
- Analyzed departmental documents for appropriate distribution and filing.
- Performed a variety of clerical duties.
- Composed letters as directed and followed through with distribution.

08/2010 – 12/2010

PROMOTIONS REPRESENTATIVE, SENECA ALLEGANY RESORT & CASINO

- Managed promotional events and represented the business to the community and public as front-line customer service personnel.

EDUCATION

CERTIFICATE, EPA WATER QUALITY STANDARDS ACADEMY

Completed EPA's classroom academy course for water quality standards and criteria programs.

UNIVERSITY OF PHOENIX

Completed coursework towards a Bachelor's Degree in Business Administration.

HIGH SCHOOL DIPLOMA, GOWANDA CENTRAL SCHOOL

CLIFFORD REDEYE III

PO Box 123, Killbuck NY, 14748 · (716)-983-6047

Clifford.Redeye@sni.org

EXPERIENCE

2014 – PRESENT

ENVIRONMENTAL ASSOCIATE, SENECA NATION OF INDIANS

- Assist all Environmental Protection Department Program Managers with duties in their respective fields, gaining a broad understanding of the Seneca Nation's environmental programs and applicable environmental law and regulations.
- Implement a wide variety of environmental programs, including blue-green algae management efforts, river and roadway spill cleanups, environmental assessments, and community outreach.

2013 – 2014

SITE SUPERINTENDENT & PROJECT MANAGEMENT, SPICER GROUP

- Responsible for managing projects valued up to \$500,000.
- Performed contract negotiations, scheduling, and estimates.
- Ensured all projects were completed on time and within budget.

2011 – 2013

PROJECT MANAGER, SENECA NATION OF INDIANS

- Managed fish and wildlife projects and built understanding of Seneca Nation environmental laws and regulations.

2007 – 2011

HEAD LOOPER, ENLINK GEOENERGY

- Demonstrated leadership skills while supervising and training new employees.
- Worked with hazardous materials.
- Independently completed projects and tested thermal conductivity.

EDUCATION

MAY 2008

BACHELOR OF ARTS IN COMMUNICATION,

STATE UNIVERSITY OF NEW YORK AT BUFFALO

MAY 2003

ASSOCIATE OF SCIENCE IN INDIVIDUAL STUDIES, JAMESTOWN COMMUNITY COLLEGE

SKILLS, TRAINING AND CERTIFICATIONS

- HAZWOPER 40 - certification for 29 CFR 1910.120 requirements
- MERRTT TRAINING- emergency response radiation
- OSHA 30, OSHA HAZMAT, Project Management Classroom certification
- CPR/FIRST AID, Lifeguarding, Safe driver, Mandatory reporting, Boat safety, Tree falling, Wildfire Fighting, Heavy Equipment Operation

EXHIBIT 6

**SENECA NATION SINGLE AUDIT REPORT FOR FY 2016
(SELECT PAGES) AND
SENECA NATION OF INDIANS PROCUREMENT POLICY
STATEMENT**

**SENECA NATION OF INDIANS
 TRIBAL GOVERNMENT PROGRAMS
 SCHEDULE OF REPORTABLE CONDITIONS,
 FINDINGS AND QUESTIONED COSTS
 FOR THE YEAR ENDED SEPTEMBER 30, 2016**

Section I – Summary of Auditors Results

Financial Statements

Type of auditors report issued: Modified

Internal control over financial reporting:

Material weakness(es) identified? yes no

Significant deficiency(ies) identified? yes none reported

Noncompliance material to financial statements noted? yes no

Federal Awards

Internal control over major programs;

Material weakness(es) identified? yes no

Significant deficiency(ies) identified? yes none reported

Type of auditors report issued on compliance for major programs: Unmodified

Any audit findings disclosed that are required to be reported in accordance with §510(a) of OMB Uniform Guidance? yes no

Identification of major programs:

<u>CFDA Number</u>	<u>Name of Federal Program or Cluster</u>
20.509	Formula Grants for Rural Areas
66.468	Drinking Water State Revolving Fund
81.087	Renewable Energy Research and Development
97.067	Tribal Homeland Security Grant Program
93.600	Child Care and Development Block Grant
93.441	Indian Health Service – Master Health Contract

Dollar threshold used to distinguish between type A and type B programs: \$ 750,000

Auditee qualified as low-risk auditee? yes no

Section II – Financial Statement Findings

No matters were reported.

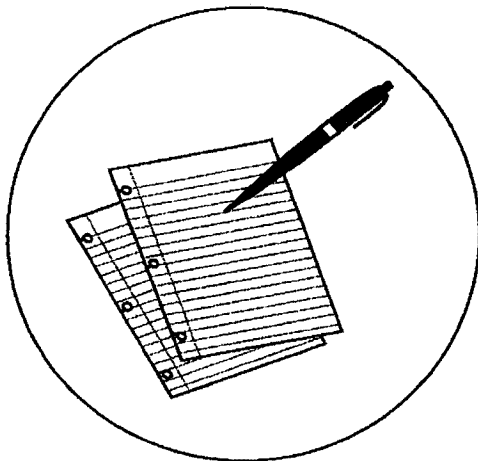
Section III – Federal Award Findings and Questioned Costs

No matters were reported.



Seneca Nation of Indians Procurement Policy Statement

As Amended-----



Approved June 2, 1999

Amended July 29, 1999

(Signature Authorization Limits & Assignments)

Amended December 22, 1999

(Open PO Limit, Pur Req Deadline)

Amended January 24, 2001

(Statement of Policies on Invoices)

Amended April 13, 2002

(Signature Authorization Waiver – Health Dept)

Amended December 14, 2002

(Close Out Deadlines for Accounts Payable)

Amended January 1, 2003

(Close out Deadlines for Accounts Payable)

Amended July 12, 2003

(Open PO limit change for Fleet Depts)

Amended September 16th, 2006

Council limit, etc....

Procurement Policy Statement Table of Contents

1	Purpose
1	Application
1	Code of Conduct
2	Authorization of the Purchasing Department
2	Taxation Status
2	Vendor Selection and Responsibility
2	Sub Contracts
3	Signature Authorization Requirements
3	Signature Authorization Assignment
3	Signature Waiver – Health Department
4	The Purchase Order
4	Deadlines for Submission of Purchase Requisitions
5	Records Retention
5	Negotiations for Merchandise
5	Computer Equipment and Peripherals
6	Contract Provisions
6	Methods of Procurement
10	Bidding Requirements
11	Bonding Requirements
12	Invoicing
13	Purchasing Flow
14	Definitions
	Appendix
15	Bid Form for small non-sealed bids
16	Purchase Requisition Form
17	Purchase Order Form
18	Computer Hardware/Software/Peripherals Request Form
19+	Standard Contract
20+	Standard Consultant Agreement & W-9 form
21	Payment Certification Form
22+	Property and Equipment Procedure Statement
23+	Inventory Forms
24+	Insurance Forms
25+	Petty Cash Policy
26+	Ethics Law
27+	TERO Law

SENECA NATION OF INDIANS

PROCUREMENT POLICY STATEMENT

PURPOSE:

The Purpose of this statement of Procurement Policy is to: Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Seneca Nation of Indians (hereafter, "Nation"); assure that all supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to the Nation; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that Nation purchasing actions are in full compliance with applicable Federal standards, regulations and Tribal laws.

APPLICATION:

This statement of Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the Nation after the effective date of this statement. It shall apply to every expenditure of funds by the Nation for public purchase, irrespective of the source of funds, including contracts. However, nothing in this statement shall prevent the Nation from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement" as used in this statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

CODE OF CONDUCT:

Purchasing Officer.

He/she must be loyal to the Nation and act in good faith in his/her dealings for the Nation. If he/she delegates any part of his/her job duties to others, he/she shall still retain responsibility for the assignment. He/she must observe lawful instruction in all his/her actions for the Nation. All funds made through his/her dealings for the Nation shall be accounted for to the tribe and he/she must not accept personal gifts, nor make a personal profit outside of his/her arrangements with the company in any work as Purchasing Officer for the tribe. The Purchasing Officer, as well as all Nation employees, shall abide by the Seneca Nation of Indians Ethics Law.

Contractors.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

AUTHORIZATION OF PURCHASING DEPARTMENT:

In order to conserve the funds of the tribe, only the Purchasing department shall be authorized to obligate funds for procurement of materials, supplies, equipment, and services for any rent or lease agreements. This provision shall apply to all activities, components, or projects administered or controlled by the Seneca Nation, regardless of the source of funds. This authorization takes the form of the purchase order. Authorized signatories on the purchase order are the Purchasing Specialist or the Purchasing Officer. Under certain circumstances, evaluated on an individual basis, the issuance of check requests in place of a purchase order will be permitted. Emergency basis and occasional overages are prime examples.

TAXATION STATUS:

As the Nation is a tax-exempt entity, the Nation will not pay, or reimburse any sales taxes charged.

VENDOR SELECTION AND RESPONSIBILITY

Every effort shall be made to obtain necessary materials, supplies, equipment or services at the lowest possible cost consistent with the quality requirements. Selecting the right vendor enables the Nation to obtain competitive pricing, reliable quality, timely delivery, and expert technical services. Vendors shall be periodically re-evaluated.

Three criteria used in evaluation of vendors are Price-negotiating thereof, Quality-minimum standards and Service-on time delivery, problem solution, returns, billing. Procurement awards will be made only to responsible entities that have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Nation shall consider such matters as contractor integrity, its compliance with public policy, its record of past performance and its financial and technical resources. Vendors shall perform in accordance with the terms, conditions and specifications of their contracts and/or purchase orders.

No employee, officer, elected official, or agent of the Seneca Nation shall participate in the selection, award, or administration of procurement supported by Federal, State, or Tribal funds if a conflict of interest, real or apparent, would be involved.

SUB CONTRACTS: (Refer to SOP-Contracts here)

Each project manager on a large contract shall be responsible for contractor conformance with the terms, conditions and specifications of the contract to ensure adequate and timely follow-up of all purchases. Documentation should be provided, when appropriate, whether contractors have met the terms, conditions and specifications of the contract. This occurs through the certification of payment form which is a part of the standard contractual/consultant agreement developed by the Nation's Department of Justice. (See Appendix) Each Sub-Contract entered into shall at a minimum:

- Be in writing - using the Standard Agreement drafted by the Department of Justice.

- Identify the interested parties, their authorities, and the purposes of the contract
- State the work to be performed under the contract
- State the process for making any claim, payments to be made, terms of the contract, shall be fixed and
- Be approved "As To Form" by the Seneca Nation Department of Justice.
- Be signed by the President/Chief Executive Officer of the Nation.

SIGNATURE AUTHORIZATION REQUIREMENTS-

The Chief Executive Officer (CEO) or the Chief Financial Officer (CFO) shall approve all purchase requests in excess of \$10,000 regardless of funding source. The departments shall submit the required documents to the Executive on their respective Reservation for signature authorization.

Denials shall be returned to the requesting Department by the CEO or CFO. Denials of requests can be submitted to the Budget & Finance Committee for consideration of approval.

All contracts shall bear the name of the Seneca Nation of Indians, with the department name as a sub-name, and be signed by the President.

Procurement Approval Limitations for authorization are as follows:

Authorization Required	Up to \$500	\$501 to \$2,500	\$2,501 to \$9,999	\$10,000 to \$49,999	\$50,000 and above
Cost Center Director	X	X	X	X	X
Revenue Source Director	X	X	X	X	X
[REDACTED]				X	X
Tribal Council					X

Signature Authorization Assignment

The Revenue Source Directors Signatory Authorization is assigned as follows:

Should a position assigned signatory authorization become vacant, the CEO may assign a signatory. In emergency situations, the original signature of the President or Treasurer will be valid.

Signature Authorization Waiver – Health Department

By council motion number R-04-13-02-06, Dated April 13, 2002, the Seneca Nation Health Department Director has signature authorization for Health Department Employment Contracts, Health Department Vendor Contracts and Health Department Consultant Contracts. This waiver is only for those contracts that would be otherwise signed by the President. Any contract above \$49,999 will still require Council authorization.

Contractual agreements for Employees

Contracts for employees shall be reviewed and acted on by the Board overseeing the employing department. The Board action should then be sent to the Budget & Finance Committee for approval. Budget & Finance Committee shall grant approval if funding is available for the position. Final approval of employment contracts rests with the Budget & Finance Committee with the exception of an appropriation being needed. The employment contract will not be effective unless and until Council approval is granted on the appropriation. . ((?With the exception of Attorneys??))

THE PURCHASE ORDER:

The front and back of the order form constitutes the legal contract when signed by the Purchasing Officer or Specialist and accepted by the vendor.

The front of the purchase shall contain, but not be limited to, the following:

- Name and address of the firm from which the buyer is ordering merchandise.
- The date of the order-Department name placing order-delivery address-Delivery date, if needed-Terms and dating-Transportation method-F.O.B. Point-Style number, quantity, description of merchandise, unit price-total cost-Signature authorizing the purchase

The back of the purchase order form contains terms and conditions concerning legal arrangements and agreements by which the vendor is bound when he/she accepts the order. Representatives of these are the following:

- Materials or Services-Quality-Indemnification-Risk of Loss-Government Regulations-Termination-Liability-Miscellaneous

Open Purchase Orders – are not to exceed \$500. Any purchase requisitions above \$500 must be itemized. The Budget & Finance Committee must approve any waiver from the established limit.

Fleet Management Departments – Open PO Limit of \$10,000 a month for gasoline/diesel fuel purchases only.

Deadline for Submission of Purchase Requisitions:

The deadline for submitting purchase requisitions for any general fund, indirect cost, investment income, or grant program will be established as three (3) weeks prior to the fiscal year end.

Should a deadline date be on a weekend or non-business day, the day PRECEDING that date will then become the deadline.

<u>Fiscal Year Ending</u>	<u>Deadline for Submission</u>
January 31 st	January 10 th
February 28 th	February 7 th
March 31 st	March 10 th
April 30 th	April 9 th
May 31 st	May 10 th
June 30 th	June 9 th
July 31 st	July 10 th
August 31 st	August 10 th
September 30 th	September 9 th
October 31 st	October 10 th
November 30 th	November 9 th
December 31 st	December 10 th

Close Out Deadlines for Accounts Payable

Any program, regardless of funding, has 30 days from the year-end to close any existing purchase orders via authorizing payment for goods/services or cancellation of the encumbrance. Failure to do so within the allotted time will automatically authorize the Fiscal Affairs Department Staff to fully cancel any existing encumbrances.

Should a deadline date be on a weekend or non-business day, the day PRECEDING that date will then become the deadline.

<u>Fiscal Year Ending</u>	<u>Deadline for Closure</u>
January 31 st	March 1 st
February 28 th	March 31 st
March 31 st	April 30 th
April 30 th	May 30 th
May 31 st	June 30 th
June 30 th	July 30 th
July 31 st	August 30 th
August 31 st	September 30 th
September 30 th	October 30 th
October 31 st	November 30 th
November 30 th	December 30 th
December 31 st	January 30 th

RECORDS RETENTION:

The Seneca Nation shall maintain records on the significant history of all procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price. All purchase orders prepared requiring bids shall have those bids attached as part of the back-up documentation. The Fiscal Affairs Department will maintain all original documents.

All original maintenance contracts, warranties, and the like shall remain with the Purchasing Department. Copies can be retained in the individual departments to which they refer.

NEGOTIATIONS FOR MERCHANDISE:

The Purchasing Officer shall obtain the best price method, terms, and delivery arrangements possible. This includes terms for discounts and method of payment. These are referred to as terms and dating. The Purchasing Officer should attempt to obtain advantageous payment procedures in all negotiations with vendors. He/she shall also attempt to obtain advantageous shipping methods, stipulations for returns and adjustments shall be agreed to between the Purchasing Officer and vendor.

Items that may be negotiated with vendors include but are not limited to the following:

Price-Terms and Conditions-Credit and/or Payment Arrangements - Delivery schedules-FOB point-warranty and guarantee provisions-technical assistance-service contracts-inspection, testing, certification requirements-special delivery requirements-return privileges-discounts-etc.

COMPUTER AND PERIPHERALS PURCHASES:

All computer equipment and peripherals shall pass through the Information Services Department. Upon recognizing a need for this type of equipment - hardware/software/peripherals - justification for such a purchase is documented and forwarded to the Information Services Department on the proper form.

After the Information Services Department reviews the justification and interviews the end-users, the selection of the proper equipment is made. The purchase requisition is completed by the Information Services Department and forwarded to the Cost Center Director and Revenue Source Directors for signatory authorization and subsequent processing by the Purchasing Department.

The goods will be delivered to the Information Services Department for inspection and initial set-up upon receipt. The Information Services Department will deliver the equipment to the requesting Department upon final inspection and set-up.

CONTRACT PROVISIONS:

All contractual obligations with the Seneca Nation shall be subject to and compliant with the terms/regulations of the following:

- Equal Employment Opportunity Act 41 CFR 60
- Copeland Anti-Rickshaw Act 18 USC 874 29 CFR Part 5
- All contracts for construction or repair
- Davis Bacon Act 40 USC 276a to 276j-7 29 CFR Part 5
- Construction contracts in excess of \$2,000 awarded by grantees and sub-grantees when required by Federal grant program legislation
- Contract Work Hours and Safety Standards Act 40 USC 327-330 29 CFR Part 5
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857h), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15)
- Contracts, subcontracts and sub-grants of amounts in excess of \$100,000
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (19-94-163, 89 Stat 871)

METHODS OF PROCUREMENT TO BE FOLLOWED:

- Extremely small purchases (those \$25 and under) that can be satisfied by local sources may be processed through the use of Petty Cash. These purchases work on a reimbursement basis. An example is, a department has a need for a ream of colored

paper, which no other department can lend them, they may for all intents and purposes, proceed to purchase that ream of paper from a local vendor, and be reimbursed from the petty cash fund. The Accounting Office of the Fiscal Affairs Department maintains this fund for the Allegany Reservation and the Clerk's Office for the Cattaraugus Reservation. See Appendix for the full Petty Cash Policy.

- Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at ~~41 U.S.C. 101-11~~ (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. - See Bidding Requirements

- Procurement by sealed bids (with formal advertising). (Generally used for construction or large contracts (>\$50,000))

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction

- In order for sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively and for the business; and
 - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- If sealed bids are used, the following requirements apply:
 - The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
 - The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
 - All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - Any or all bids may be rejected if there is a sound documented reason.
 - In accordance with ~~24 CFR 905.175 (c)~~, award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Indian-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of

the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000
When the lowest responsive bid is At least \$100,000 but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000 but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000 but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000 but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000 but less than \$1,000,000	5% of that bid, or \$40,000
At least \$1,000,000 but less than \$2,000,000	4% of that bid, or \$60,000
At least \$2,000,000 but less than \$4,000,000	3% of that bid, or \$80,000
At least \$4,000,000 but less than \$7,000,000	2% of that bid, or \$105,000
\$7,000,000 or more	1% of the lowest responsive bid, with no dollar limit

- Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
 - Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical; Use the Nation bid form, along with cover sheet indicating to which sources the form has been transmitted.
 - Proposals will be solicited from an adequate number of qualified sources;
 - Grantees and sub-grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
 - Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - Grantees and sub-grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
 - Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals or one of the following circumstances applies:
 - Professional and Consulting Services.
 - The item is available only from a single source;

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - The awarding agency authorizes noncompetitive proposals; or
 - After solicitation of a number of sources, competition is determined inadequate.
- Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- Grantees and sub-grantees may be required to submit the proposed procurement to the awarding agency for pre-award review.
- Contracting with small and minority firms, women's business enterprise and labor surplus area firms.
 - The Nation will take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible.
 - Affirmative Action steps shall include:
 - Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - Requiring the prime contract, if subcontracts are to be let, to take the affirmative steps listed above.

BIDDING REQUIREMENTS:

All procurement shall be conducted in a manner to provide open and free competition. Small Procurement Purchases and Non-Sealed Bids shall be let on the Nation Bid Form, with a cover sheet indicating to which vendors the bid form was transmitted. The bids shall contain a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.

All procurement is subject to cost/price analysis. Each purchase shall be reviewed and evaluated to determine reasonableness, allocation appropriateness and allowability and price comparison with other vendors.

Bids shall be obtained according to the following schedule:

1. ~~Equipment~~ Purchases under \$500.00 - no bid required, unless the total purchase exceeds \$2,500.

For example, a department wants to purchase 10 filing cabinets; each cabinet costs \$300. Therefore the total cost is \$3,000. This expense will have at least three bids attached from various sources. If the department only wanted 3 cabinets, the total cost would be \$900 and would not require the securing of three bids.

2. Purchases over \$500.00 - but less than \$2,500.00

Three bids must be obtained and attached to the purchase requisition. If the lowest bid is not the one accepted, full justification for such action should be documented and attached. The purchasing department will have the authorization to change a vendor if sufficient justification is not included. The bids will be attached to the file copy of the purchase order and forwarded to Accounts Payable.

3. Purchases over \$2,500 but less than \$25,000

A bid packet is to be prepared and submitted for the three written bids process. The bid packet is to include written specifications of the goods a/o services needed. This documentation should then be sent to at least 5 sources. The quotes should be a written confirmation from the supplier indicating the goods or services meet the minimum essential characteristics standards necessary for its intended use, as well as terms, delivery and payment.

As bidders the following requirements shall apply:

- Invitation for bids.
- Bids shall be solicited from known suppliers and given adequate time to respond.
- Include Non-Collusive Bidding Certification.
- Legal Status Information.
- Tribal Laws such as Tribal Employment Rights Ordinance (TERO) and Ethics.
- Bids shall be specific and clearly define our needs to allow for competitive bidding.

- Procedures will be followed and all bids will be opened at one time concurrent with opening date on the bids by the Program Director and Purchasing manager.
4. Purchases over \$49,999 must meet the requirements of number 3 above, and receive Council approval.
 - The Seneca Nation Tribal Council can reject any or all bids at any time in the best interest of the tribe,
 5. Special purchases, contracts, large items, sealed bids. A sealed bid may be required for certain procurement and will be publicly solicited and a firm fixed price contract awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids is the lowest price. Where appropriate, comparisons shall be made to determine if purchasing or leasing alternatives are more economical.
 - Complete uniform specifications must be submitted to suppliers.
 - Two or more suppliers willing and able to submit and compete for the Seneca Nation of Indians business
 - For those supplies or services over \$2,500, either the Program Director and/or the Purchasing Officer will prepare a complete specification package.
 - Specifications are sent to the Purchasing Officer.
 - Purchasing Officer prepares the bid package to be sent to at least 5 vendors.

BONDING REQUIREMENTS:

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or sub-grantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Invoicing -

Fleet Management

The fleet management departments are hereby required to have the vehicle identification number and/or license plate number and the make and model of the vehicle for which parts are being purchased on each invoice as prepared by the vendor. Failure of the vendor to do so will result in non-payment of charges. Vendors will be notified of the new requirement via letter.

Department of Public Works

The Departments of Public Works are hereby required to have the building to which the materials are to be used listed on each invoice as prepared by the vendor. Each job should require a separate form (work order) to properly track the expenses associated with the job. These work orders should be directly traceable back to the purchase orders.

Weatherization/LI-Heap

Weatherization, Housing Improvement, LI-Heap, Tribal Advocate Departments and others like it are hereby required to submit proper documentation with regard to where the services are taking place. For example, weatherization job #123 pertains to the work on John Smith's home. This new requirement is necessary to be able to trace the expenses in reverse. If an auditor pulls an item off of the General Ledger, and goes to the accounts payable vendor files, they need to be able to determine the actual residence at which the work took place. This is then traced back to records within the Weatherization department to ensure client eligibility and full documentation is in the files.

PURCHASING FLOW:

1. A staff member recognizes a need for goods and/or services. That staff member completes the purchase requisition and signs as the person requesting the goods/services. This requisition is then submitted to the Cost Center Director who signs as authorizing the purchase and attesting to the allowability and availability of funds from the indicated source. The form is then submitted to the Revenue Source Director (RSC). The RSC director shall sign as the final authorization/attestation of allowability/applicability to their respective program and then forward to the Purchasing Department. The yellow copy of the purchase requisition is retained in the departmental office for reconciliation to the gold copy of the purchase order.
2. The Purchasing Department checks for compliance with the Procurement Policy Statement and signs as reconciled and in compliance with Fiscal Policy. A Purchase Order is then processed in triplicate. The white/original copy goes to the vendor, the yellow/gold copy is returned to the cc/rsc director and the pink copy is sent to the Accounts Payable Office for further processing upon receipt of the invoice or payment certification.
3. The department receiving the merchandise inspects it as to quality, condition, and quantity. The person responsible for ordering, signature authorization and receipt of goods should all be different people for proper internal control.
4. The receiving department will inspect the vendors packing slip and compare it to the purchase order and the actual order received. All invoices should be mailed directly to the Accounts Payable Department. If an invoice is received with an order, it is to be forwarded to the Accounts Payable Department immediately.
5. Upon inspection of order for quality, condition, and quantity, the Cost Center Director signs the gold copy of the purchase order, approving payment and attaches the receiving report/packing slip. After approval, the gold copy is sent to the Accounts Payable Department to be processed.
6. If payments are to be made on one purchase order, splits are prepared upon receipt of invoices in the Accounts Payable Department. The Splits are signed off as authorization of payment processing by the receiving dept. Upon final payment, the Gold Copy of the Purchase Order is signed and forwarded to the Accounts Payable Department for processing of the final payment.
7. Upon receipt of an invoice, the Accounts Payable Department matches the invoice against the purchase order. The gold receiving report (gold copy of PO) is received as marked for payment along with the receiving report/packing slip then payment is made.
8. Payments are not made prior to the receipt of goods or services unless it is a down-payment arrangement being made by a contractual agreement.

DEFINITIONS:

SENECA NATION OF INDIANS - Federally Recognized Native American Tribal Government, "Nation"

COST CENTER - Departmental codification - each department is assigned at three-digit number. This number will not change. Abbreviated as CC

REVENUE SOURCE CODE - Source of funding - Federal/State/Local/Tribal/Other. Each source is assigned a three-digit number. The first two will remain consistent; the last digit signifies the fiscal year. Abbreviated as RSC

EXHIBIT 7

**COUNCIL RESOLUTION AUTHORIZING EMERGENCY
ACTION AND CONTINGENCY PLAN TO RESTRAIN
POLLUTION OF THE NATION'S WATERS**

RESOLUTION

Authorizing Emergency Action and Contingency Plan to Restrain Pollution of the Nation's Waters

Sponsor: _____

Second: _____

Date: _____

WHEREAS, the Seneca Nation of Indians ("Nation") possesses inherent sovereign authority to protect the health, welfare, safety, environment, political integrity, and economic security of the Nation, its members, and persons subject to the jurisdiction of the Nation; and

WHEREAS, Section I of the Constitution of the Nation of 1848, as amended ("Constitution"), vests the Legislative Authority of the Seneca People in the Nation's Council; and

WHEREAS, the Nation continues to develop its environmental management and regulatory programs and powers in order to protect, maintain, and enhance the Nation's natural resources and ensure a healthy, sustainable future for our communities; and

WHEREAS, the Nation's Council finds that authorizing its legal counsel to bring lawsuits to restrain water pollution that presents an imminent and substantial endangerment to health, welfare or the environment and providing for a contingency plan to implement that authority are necessary and valid actions to protect the quality of the Nation's waters, the safety of the Nation's members and residents, and the political integrity and economic security of the Nation, and also strengthen the Nation's environmental programs and powers;

NOW, THEREFORE, BE IT:

RESOLVED, that the Nation's legal counsel, upon receipt of evidence that a source or combination of sources is presenting an imminent and substantial endangerment to the health, welfare, or environment by discharging pollutant(s) into the Nation's waters, and upon the direction of the President of the Seneca Nation, may bring suit on behalf of the Nation in any competent court against any person causing or contributing to the alleged discharge, requiring such person to stop such discharge or take such other action as may be necessary, and may also, in the case of an unauthorized discharge, seek appropriate damages to compensate the Nation for any harm caused by the discharge; and be it further

RESOLVED, that any person causing or contributing to such discharge shall immediately, and in any case not more than 24 hours after such discharge, report such discharge to the Director of the Nation's Environmental Protection Department ("Director"); and be it further

RESOLVED, that officers and staff of the Nation who, during the course of their duties or otherwise, witness or receive reports of any new or suspicious discharge of pollutants into the Nation's waters, shall immediately contact the Director regarding such discharge; and be it further

RESOLVED, that the Director shall investigate the discharge as soon as practicable and determine whether the discharge presents an imminent and substantial endangerment to the health, welfare, or environment, as described in this Resolution. If the Director does so determine, the Director shall provide such information to the Nation's legal counsel and, after consultation with the Nation's legal counsel, shall recommend to the President that the President instruct the Nation's legal counsel to file suit as provided in this Resolution; and be it further

RESOLVED, that for the purposes of this Resolution:

"Person" means an individual, corporation, partnership, association, government (whether federal, tribal or state) or any political subdivision or agency thereof, commission, or interstate body, regardless of whether that entity is a member of the Nation or established under the Nation's laws; and

"Pollutant" or "Pollution" means any substance or addition of heat that may adversely affect the quality of the Nation's waters.

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Express



FedEx carbon-neutral
envelope shipping

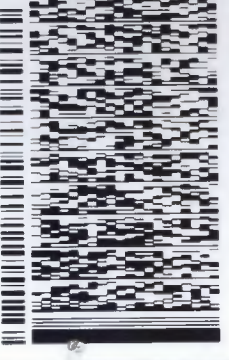
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RAA

ORIGIN ID:DKKA (716) 532-2546
USP MAYBEE
SENECA NATION
12837 ROUTE 438
MARSHFIELD, NY 14091
UNITED STATES US

TO **PETER LOPEZ**
US EPA, REGION 2
290 BROADWAY
30TH FL
NEW YORK NY 10007

SHIP DATE: 13APR18
ACTWGT: 1.20 LB
CAD: 6997272/SSF01822
BILL CREDIT CARD



FedEx
Express
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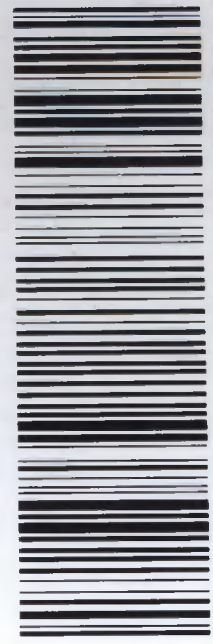
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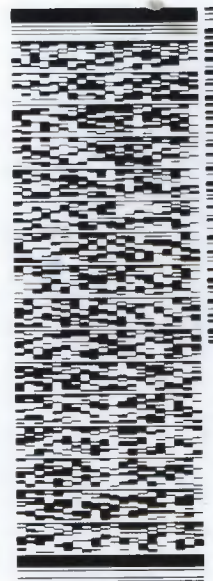
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RPA

UNITED STATES US

TO
PETER LOPEZ
US EPA, REGION 2
290 BROADWAY
30TH FL
NEW YORK NY 10007

REF: (212) 687-3487

DEPT:



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3795346

TRK# 7805 1097 9098
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