

**POKAGON BAND OF POTAWATOMI INDIANS
SEWER AND SEWAGE DISPOSAL ACT**

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CHAPTER 1
GENERAL PROVISIONS

Section 1.01 Short Title

This Act shall be known, and may be cited as, the "Sewer and Sewage Disposal Act".

Section 1.02 Authority

The Tribal Council enacts this Act in accordance with Article III, Sections 1 and 2 of the Constitution, the duties of the Tribal Council stated in Article IX, Subsections 1(a), 1(c) and 1(d) of the Constitution, and the legislative powers of the Tribal Council enumerated in Article IX, Subsection 2(a).

Section 1.03 Findings

The Tribal Council finds as follows:

(a) The Band owns and developed the Site, upon which it constructed and installed the Band's Sewerage System;

(b) The Village's Sewerage System accepts, collects, and transports Sanitary Sewer from customers for ultimate treatment and disposal at the City's Wastewater Treatment Plant;

(c) The Band's Sewerage System is connected to the Village's Sewerage System so that the Village can provide Sewer Services under the Sewer Agreement for Sanitary Sewage discharged from Site Customers;

(d) Under the Sewer Agreement, the Band and Village agreed that:

(1) because of the Site's status as trust land, the Village Sewers and Sewage Disposal Ordinance and other Applicable Legal Requirements do not apply to the Site; but

(2) the Applicable Legal Requirements apply to the Village's Sewerage System and discharges from the Band's Sewerage System once those discharges enter the Village's Sewerage System;

(3) if the Band is the Site Customer that is responsible to the Village for unpaid reimbursable costs in accordance with the Sewer Agreement, then the Village may invoice the Band for such costs and such invoice is due and payable within 30 days of receipt;

(e) Under the Sewer Agreement, the Band agreed to require any Site Customer to comply, at a minimum, with the Applicable Legal Requirements, including the Applicable Substantive Requirements;

(f) Under the Sewer Agreement, a Site Customer that Discharges from the Site to the Village's Sewerage System, or causes, creates or contributes to a Prohibited Discharge involving the Village's Sewerage System, is responsible for the Reimbursable Costs, in accordance with the Sewer Agreement;

(g) A Site Customer that is not the Band that Discharges from the Site to the Band's Sewerage System, or causes, creates or contributes to a Prohibited Discharge involving the Band's Sewerage System, should be responsible for the Reimbursable Costs, in accordance with this Act; and

(h) This Act is necessary to:

- (1) fulfill the Band's obligations under the Sewer Agreement;
- (2) impose obligations on Site Customers, including for Prohibited Discharges; and
- (3) ensure that Site Customers other than the Band can be held responsible for violations, including of any obligations required to be imposed on Site Customers under the Sewer Agreement.

Section 1.04 Construction

(a) To the extent reasonable, this Act shall be read and interpreted in a manner that is consistent with the Constitution, but in the event of any inconsistency, the Constitution shall control.

(b) To the extent reasonable, this Act shall be read and interpreted in a manner that is consistent with the Health and Safety Act, but in the event of any inconsistency, this Act shall control.

Section 1.05 Severability

If a court of competent jurisdiction shall adjudge any provision of this Act to be invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

Section 1.06 Definitions

The following terms are defined under this Act:

(a) “Act” means this Sewer and Sewage Disposal Act.

(b) “Applicable Legal Requirements” means all applicable local, state, and federal laws, regulations, and rules that apply to wastewater characteristics, collection, treatment service, disposal, pretreatment, and control including:

- (1) the Village Sewers and Sewage Disposal Ordinance;
- (2) the terms, conditions, and requirements of any decision or determination promulgated, issued or made under the Village Sewers and Sewage Disposal Ordinance;
- (3) the Village Connection Standards and Requirements;
- (4) the Federal Water Pollution Control Act, as amended, 33 USC 1251, et seq.;
- (5) the General Pretreatment Regulations (40 CFR Part 403);
- (6) Part 31 of Act 451 of the Public Acts of Michigan of 1994, MCL §§ 324.3101 et seq., as amended;
- (7) Michigan Administrative Code, R 323.2301 et seq., as amended, promulgated pursuant to Sections 3103, 3106, and 3109 of Part 31 of Act 451 of the Public Acts of Michigan of 1994, as amended;
- (8) final orders of any state or federal courts of competent jurisdiction;
- (9) final orders or determinations of local, state, or federal agencies or officials of competent jurisdiction; and
- (10) the Village-City Agreement.

(c) “Applicable Sewer Agreement Requirements” means:

- (1) No Site Customer shall Discharge any of the following into the Band’s Sewerage System without the prior written consent of the Village:

(i) any nondomestic wastewater from commercial or industrial sources (i.e. any wastewater other than Sanitary Sewage);

(ii) any septage waste or any waste from a facility such as a septic system or portable toilet facility, or any other trucked or hauled waste or wastewater;

(iii) any wastewater or sewage that was not generated by a Site Customer and/or not discharged from the Site Customer's premises; or

(iv) any stormwater, surface water, groundwater, roof runoff, or subsurface drainage; and

(2) No Site Customer shall discharge from any location other than an approved connection point to the Band's Sewerage System.

(d) "Applicable Substantive Requirements" means the substantive provisions of the Village Sewers and Sewage Disposal Ordinance and the Village Connection Standards and Requirements that apply to:

(1) the design and specifications of connections to a Sewerage System (including as provided by Sections 300-22 through 300-26);

(2) accidental discharges (including as provided by Section 300-18 of the Village Sewers and Sewage Disposal Ordinance);

(3) prohibitions on discharging stormwater, surface water, groundwater, roof runoff, or subsurface drainage (including as provided by Section 300-28 of the Village Sewers and Sewage Disposal Ordinance);

(4) general discharge prohibitions (regarding discharges that will pass through or cause interference with the operation or performance of the Band's Sewerage System, the Village's Sewerage System, or the City's wastewater treatment system) (including as provided by Section 300-31 of the Village Sewers and Sewage Disposal Ordinance);

(5) specific discharge prohibitions (including as provided by Section 300-32 of the Village Sewers and Sewage Disposal Ordinance);

(6) supplemental discharge limitations (including as provided by Section 300-34 of the Village Sewers and Sewage Disposal Ordinance);

(7) national discharge limitations (including as provided by Section 300-33 of the Village Sewers and Sewage Disposal Ordinance); and

(8) prohibitions on the discharge of pollutants that may endanger human health or welfare, create a hazard to property, endanger the environment, interfere with or have deleterious effects on Sewerage Systems and treatment facilities, or otherwise constitute a public nuisance.

(e) “Band” means the Pokagon Band of Potawatomi Indians.

(f) “Band’s Sewerage System” means the Sewerage System constructed and installed by the Band on the Site and owned solely by the Band.

(g) “City” means the City of Dowagiac, Michigan.

(h) “Civil Citation” means a written direction issued by a Compliance Official that requests that a Site Customer that is not the Band, appear before the Tribal Court by a stated time and place to answer for an alleged violation of this Act.

(i) “Compliance Official” means:

(1) for residential housing units located on the Site, the Director of Housing and Community Development;

(2) for Band facilities located on the Site, the Director of Facilities; and

(3) any other person designated to serve in such capacity by resolution of the Tribal Council.

(j) “Constitution” means the Constitution of the Band, as amended from time-to-time.

(k) “Code of Offenses” means the Band’s Code of Offenses, as amended from time-to-time.

(l) “Discharge” means the introduction of waste, wastewater, effluent, or pollutants into the Band’s Sewerage System and/or the Village’s Sewerage System, whether intentional or unintentional, and whether directly (such as through an approved sewer connection or other approved discharge point) or indirectly (including sources such as inflow and infiltration). Discharge includes the introduction of waste, wastewater, effluent, or pollutants into the Band’s Sewerage System and/or the Village’s Sewerage System by any means or method of conveyance, including the following: pipes; conduits; pumping stations; ditches; tank trucks; the ground through defective pipes, pipe joints, or walls; roof leaders; cellar, yard, or area drains; foundation

drains; drains from springs or wetlands; manhole covers; crossover pipes from storm sewers; catch basins; storm sewers; surface runoff; street wash waters; or other drainage.

(m) “Health and Safety Act” means the Band’s Health and Safety Act, as amended from time-to-time.

(n) “Includes” or “Including”, whether capitalized, shall not be limiting, but rather, shall be deemed to be followed by “without limitation”.

(o) “Prohibited Discharge” means a Discharge from the Site that violates Applicable Legal Requirements, produces a deposit or obstruction, or otherwise damages, injures, or impairs the Band’s Sewerage System and/or Village’s Sewerage System, or causes or contributes to a violation of any federal, state or local law governing the Band’s Sewerage System and/or Village’s Sewerage System.

(p) “Prosecutor” means a prosecutor of the Band.

(q) “Reimbursable Cost” means all expenses, costs, losses or damages (direct or indirect) payable or incurred by the Band (in the case of the Band’s Sewerage System), or the Village (in the case of the Village’s Sewerage System) to the extent arising from or caused by any violation of this Act, including:

(1) all costs incurred in responding to any violation, including expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment;

(2) all costs of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any violation;

(3) the full amount of any fines, assessments, and penalties, including natural resources damages, levied by any government agency or third party;

(4) the full value of any staff time (including any administrative and overhead costs and any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including legal counsel and any special legal counsel), associated with reviewing, responding to, investigating and/or verifying the violation; and

(5) all costs incurred and assessed to the Site Customer by the Band or Village, to correct any violation, damage or impairment to the Band’s Sewerage System and/or Village’s Sewerage System caused by the violation.

(r) "Sanitary Sewage" means water-carried waste of human origin generated by personal activities from toilet, kitchen, laundry, or bathing facilities, or by other similar facilities. Sanitary Sewage may not include any waste resulting from industrial or commercial processes, including any hazardous or toxic pollutants. Wastes emanating from sources other than residential housing units which are to be considered Sanitary Sewage shall be of the same nature and strength and have the same flow rate characteristics as waste from residential housing units. Sanitary Sewage is sometimes also referred to as domestic wastewater.

(s) "Sewerage System" means a system of pipes, structures, and equipment that includes any of the following: sewer mains, force mains, pipes, channels, conduits, manholes, manhole covers, pumping stations, lift stations, grinder pumps, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, for the purposes of accepting, collecting, transporting, treating, or otherwise handling, and disposing of Sanitary Sewage.

(t) "Sewer Agreement" means the Agreement Regarding Sewer Services between the Village and Band, dated September 28, 2020, as amended from time-to-time.

(u) "Sewer Services" means the acceptance, collection, and transportation by the Village of Sanitary Sewage discharged from the Site through the Band's Sewerage System and ultimately to the Village's Sewerage System for treatment and disposal at the City's Wastewater Treatment Plant pursuant to the Village-City Agreement, as otherwise described and provided by the Sewer Agreement.

(v) "Site" means the approximately 320-acre parcel of land located adjacent to Dailey Road in LaGrange Township, Michigan, which is owned by the Band, with title held by the Federal government in trust for the Band and legally described as:

- (1) Parcel I: The Southeast Quarter (SE ¼) of Section 71, Town 6 South, Range 15 West;
- (2) Parcel II: The South Half of the Southwest Quarter (S ½ SW ¼) of Section 7, Town 6 South, Range 15 West; and
- (3) Parcel III: The West Half of the Southwest Quarter (W ½ SW ¼) of Section 8, Town 6 South, Range 15 West.

(w) "Site Customer" means any customer located on the Site that receives any Sewer Services, and:

- (1) for any Band facilities located on the Site, shall be the Band; and

(2) for any residential housing unit located on the Site, shall be the Tenant.

(x) “Tenant” means any person who is a party to a lease with the Band for either a residential housing unit located on the Site or for Band land located at the Site for residential use.

(y) “Tribal Council” means the Tribal Council of the Band established under Article X of the Constitution.

(z) “Tribal Court” means the trial level court of the Band.

(aa) “Village” means the Village of Cassopolis, Michigan.

(bb) “Village-City Agreement” means the agreement between the Village and the City, dated February 24, 1986, as amended, under which City receives and treats sewage Discharged to the City through the Village’s Sewerage System.

(cc) “Village Connection Standards and Requirements” means the legal standards and requirements applied by the Village to connections to the Village’s Sewerage System, as such standards and requirements are provided by Village ordinances, plumbing codes, building codes, residential codes, or other applicable Village rules or regulations, as amended from time-to-time.

(dd) “Village Sewers and Sewage Disposal Ordinance” means Article II (“Sewers and Sewage Disposal”) of Chapter 300 (“Sewers and Water”) of the Village Code of Ordinances, as amended from time-to-time.

(ee) “Village’s Sewerage System” means the Sewerage System that accepts, collects, and transports sewage, including from Site Customers, for ultimate treatment and disposal by the City’s Wastewater Treatment Plant pursuant to the Village-City Agreement and is solely owned and operated by the Village.

CHAPTER 2 VIOLATIONS

Section 2.01 Applicable Legal Requirements

No Site Customer shall violate any Applicable Legal Requirements, including any Applicable Substantive Requirements, in connection with any Discharge from the Site.

Section 2.02 Applicable Sewer Agreement Requirements

No Site Customer shall violate any Applicable Sewer Agreement Requirements in connection with any Discharge from the Site.

Section 2.03 Prohibited Discharge

No Site Customer shall cause, create or contribute to a Prohibited Discharge.

Section 2.04 Imputed Violations

(a) Without limitation, a Site Customer that is a Tenant shall be deemed to have violated this Act, and shall be liable under this Act, for all violations that occur or originate from the Site Customer's residential housing unit, whether or not the Tenant personally was the source, cause, or contributed to any violation.

(b) Without limitation, a Site Customer that is a Tenant shall be liable under this Act for all enforcement measures, including cease and desist orders, relating to violations that occur or originate from the Site Customer's residential housing unit, whether or not the Tenant personally is the source, cause, or contributed to any violation.

(c) Nothing in this Act shall limit or impair a Site Customer's ability to bring any civil action against any person or entity that caused or contributed to any violation of this Act, except to the extent the person or entity that caused or contributed to any violation of this Act is the Band.

CHAPTER 3 ENFORCEMENT

Section 3.01 Compliance Official

(a) The Compliance Official shall have the authority and responsibility to exercise the powers delegated to the Compliance Official under this Act.

(b) The Compliance Official shall:

(1) cause inspections and investigations to be conducted to determine compliance with this Act;

(2) reasonably coordinate and cooperate with the Village, as appropriate, in connection with any violation of this Act; and

(3) implement appropriate enforcement measures, including issuing cease and desist orders, and causing Tribal Court actions to be initiated, including by issuing Civil Citations, except as provided in Subsection 3.01(c).

(c) Notwithstanding any other provision of this Act, if the Site Customer is the Band, the Compliance Official shall not cause any Tribal Court action to be initiated, and the Band shall not be liable for any amount under this Act.

Section 3.02 Civil Citation

(a) The Prosecutor shall assist the Compliance Official in enforcing this Act, including prosecuting all civil infractions arising from the issuance of a Civil Citation and, when requested by the Compliance Official, bringing an action in Tribal Court to enforce cease and desist orders of the Compliance Official. Additionally, and without limitation, the Prosecutor may recover all costs of enforcement from any Site Customer that is not the Band found to be in violation of this Act.

(b) The Prosecutor shall bear the burden of proof to establish by a preponderance of evidence that the Site Customer violated this Act.

(c) Notwithstanding Subsection 3.02(a), the Prosecutor shall not prosecute any civil infraction arising from the issuance of a Civil Citation under this Act if the Site Customer is the Band.

Section 3.03 Civil Penalties

(a) Any Site Customer who is found by the Tribal Court to have violated this Act shall be liable for:

(1) A civil fine not to exceed \$5,000; and

(2) All Reimbursable Costs.

(b) Without limitation, the Tribal Court may find any Site Customer who was issued a Civil Citation and fails to either attend a Tribal Court hearing or to comply with a Tribal Court order, to be in civil contempt.

(c) Each day that a violation continues shall constitute a separate violation of this Act.

(d) All civil fines accruing under this Act shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture or

damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

Section 3.04 Other Remedies

(a) The exercise of any remedy under this Act shall not limit any other available rights or remedies of the Band, including under the Housing Act or any lease.

(b) In accordance with Section 1(L) of the Code of Offenses, through the resolution approving this Act, the Tribal Council expressly designates any Compliance Official as a “Public Official” for purposes of the Code of Offenses.

Section 3.05 Tribal Court Jurisdiction

(a) The Tribal Court shall have exclusive jurisdiction over actions arising under this Act, including over enforcement orders issued by the Compliance Official and over civil infractions arising from the issuance of any Civil Citation.

(b) The Tribal Court shall grant deference to the reasonable interpretations of this Act by the Compliance Official.

(c) The Tribal Court shall not have jurisdiction over actions arising under this Act against the Band.

Section 3.06 Sovereign Immunity

(a) The Compliance Official is an officer of the Band government and shall be immune from suit when acting in an official capacity to the fullest extent permitted by law.

(b) Nothing in this Act shall waive the sovereign immunity of the Band or any of its officials, employees or representatives.

LEGISLATIVE HISTORY

Sewer and Sewage Disposal Act, enacted September 28, 2020, by Res. No. 20-09-28-03.