

CHAPTER 4-6 AGGREGATE DEVELOPMENT & RECLAMATION ACT

4-6-1 Findings

Surface aggregate (rock, gravel, and sand) of the Reservation and the lands on which they lie are resources of great value to the Tribe and its members, and its extraction through aggregate development is an activity that can make important contributions to the well-being of the Reservation. Since exploration and aggregate development activities extend over a long period of time and may pose environmental hazards with irreversible impacts, preventative rather than corrective or remedial measures are a more effective and more economical way to control adverse water quality and other human and environmental impacts which may be associated with such activities. In addition, full reclamation of land affected by exploration and aggregate development activities upon completion of aggregate development is necessary to protect the Reservation population and environment. The regulation of all exploration and aggregate development activities and reclamation of affected land on the Colville Reservation through implementation of this Chapter is necessary to protect the Reservation resources, economy, health, safety and welfare of the Reservation population and to protect the authority of the Confederated Tribes of the Colville Reservation to effectively govern the Reservation for these purposes.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-2 Definitions

For the purpose of this Chapter the following words and phrases shall have the meaning ascribed to them in this section.

- (a) "Aggregate" means coarse particulate material used primarily in construction, including sand, gravel, and stone.
- (b) "Aggregate development" means the excavation, removal, and processing of aggregate, including the removal of vegetation and overburden necessary to expose the aggregate. Prospecting and exploration activities shall be included within the meaning of this term when the removal of geologic sample materials exceeds a cumulative total in excess of one ton. Aggregate development shall exclude excavations or grading used primarily for on-site construction and on-site road construction and maintenance.
- (c) "Airborne particulate Materials" are minute airborne liquid or solid particles (such as dust, fume, mist, smog, and smoke) that cause air pollution. Airborne particulate materials may vary greatly in color, density, size, shape, and electrical charge, from place to place and from time to time.
- (d) "Applicant" means the person signing the application who is responsible for compliance with all provisions of this Chapter.
- (e) "Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.
- (f) "Critical aquifer recharge areas" means areas with a critical recharging effect on aquifers used for potable water.
- (g) "Colville Environmental Quality Commission" or "CEQC" means the environmental administrative appellate body of the Confederate Tribes of the Colville Reservation, provided for in Chapter 4-23 of the Colville Tribal Code [See also Chapter 2-4 Administrative Procedure Act.]
- (h) "Department" means the Environmental Trust Department of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-620)

- (i) "Disturbed area" means any place where activities clearly in preparation for, or during, aggregate

(June 2018 version Chapter 4-6)

development have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: working faces, water bodies created by related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, borrow pits and equipment staging areas. Disturbed areas shall also include waste rock sites and tailing facilities. Disturbed areas do not include lands that have been reclaimed to all standards outlined in this chapter, rules of the Department, any applicable NEPA document, and the approved reclamation plan. .

- (j) “Operations” means all aggregate development-related activities exclusive of reclamation that include but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of Tribal law. Aggregate development operations specifically include:
 - (1) The extraction of rock, stone, gravel, sand, and earth;
 - (2) Blasting, equipment maintenance, sorting, crushing, and loading;
 - (3) On-site aggregate processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;
 - (4) Transporting materials to and from the aggregate site, on-site road maintenance, road maintenance for roads used extensively for aggregate development activities, traffic safety, and traffic control; and
 - (5) Related milling facilities which are not adjacent to or in the vicinity of the aggregate operation producing the material to be milled and which process aggregate products by treatment or concentration
- (k) “Operator” means any person engaging in aggregate development operations except an employee with wages as their sole compensation.
- (l) “Overburden” means the earth, rock, soil, and topsoil that lie above aggregate deposits.
- (m) “Person” means any individual, partnership, private, public, Tribal or municipal corporation, Tribal enterprise, county, the Department, or and Tribal, state, or local governmental entity, or association of individuals of whatever nature.
- (n) “Reclamation” means the implementation of procedures, during and after an exploration or aggregate development operation, intended to minimize and/or mitigate the disruption of Reservation resources resulting from the operation and to protect Reservation resources and the health, safety, and welfare of the Reservation population by providing for subsequent beneficial use of affected lands through the rehabilitation of plant cover, soil stability, water resource, and other appropriate measures. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific aggregate development site, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the aggregate development site and to prevent or mitigate future environmental degradation.
- (o) “Reservation resource” means air, archaeological/historical, cultural, soil, water, groundwater, plant, fish and wildlife resources and shall also mean capital improvements located within the Colville Indian Reservation.
- (p) “Screening” consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of aggregate development on adjacent properties and/or the

environment.

- (q) “Aggregate development” means the development of aggregate by removing the overburden lying above such deposits and extracting directly from the deposit thereby exposed. The term includes extracting directly from such deposits where there is no overburden, extracting by auger method, reworking of aggregate development refuse or tailings, and the production of aggregate development refuse. The term also includes, but is not limited to, the following: open cut aggregate development; open pit aggregate development; strip aggregate development; quarrying; placer operations; and the excavation and removal of sand, gravel, clay, rock or other materials for the primary purpose of construction or maintenance of roads. Prospecting and exploration activities shall be included within the meaning of this term when the removal of geologic sample materials exceeds a cumulative total in excess of one ton. Aggregate development shall exclude excavations or grading used primarily for on-site construction and on-site road construction and maintenance.
- (r) “Walk-on Prospecting” means those casual exploration activities properly authorized by the Department which have the potential for causing little or no surface disturbance and which will not disturb water quality. Examples of such activities are: hand sample collection; geochemical sampling; geologic mapping; geophysical surveys (non-land disturbing); boundary or claim surveying; or location work.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-3 Authority and Scope

- (a) This Chapter is enacted by the Colville Business Council pursuant to its inherent sovereignty over all territory within the exterior boundaries of the Colville Indian Reservation, any and all authority delegated to the Tribes of the United States, and the authority vested in it by Article V, Section 1 (a) of the Constitution of the Confederate Tribes.
- (b) The provisions of this Chapter shall apply to all aggregate development, aggregate development operations, and associated disturbed areas occurring within the exterior boundaries of the Colville Indian Reservation including lands held in trust or in fee status, and on other trust lands or allotments under the jurisdiction of the Colville Tribes, to the extent these provisions do not conflict with any applicable regulations or statutes of other competent jurisdictions.
- (c) The Colville Tribes’ Environmental Trust Department shall be responsible for the administration of the Chapter, subject to appellate administrative review by the Colville Environmental Quality Commission (CEQC) as may be provided for by this Chapter, the Colville Administration Procedure Act and Chapter 4-23 of the Colville Tribal Code.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-4 Water Quality Permits Required

- (a) Water quality permits are required for aggregate development and aggregate development operations, exploration, and prospecting operations on all lands within the Colville Indian Reservation as specified in this Chapter for all activities commenced, resumed, modified, or expanded after the adoption of this Chapter, where aggregate development results in, or has resulted in:
 - (1) More than one acre of disturbed area;
 - (2) Slopes greater than thirty feet high and steeper than 1.5 foot horizontal to 1.0 foot vertical; or
 - (3) More than one acre of disturbed area within a twenty acre area, when the disturbed area results from prospecting or exploration activities.
- (b) Water quality permits under this Chapter are not required for walk-on prospecting as defined in this

Chapter by operators on their own trust or fee land so long as those walk-on prospecting activities involve only casual exploration and do not involve surface or water disturbing activities including but not limited to road building, blasting, drilling, excavation, or any activity within or disturbance to watercourses or wetlands as defined in Colville Tribal Code 4-9 Hydraulics Project Permitting or within Riparian Management Zone as defined in Colville Tribal Code Chapter 4-7 Forest Practices.

- (c) All permits issued pursuant to this Chapter shall be issued for a term not to exceed five (5) years.
- (d) A permit for exploration is a limited authorization and shall not authorize development and active aggregate development operations. Prior to initiation of development and active aggregate development operations, it shall be the responsibility of the operator to apply for and obtain a permit authorizing location development, operations, and establishing reclamation requirements.
- (e) A separate permit shall be required for development and operations at each noncontiguous aggregate development site. At the option of the Department, application may be submitted to cover a single exploration operation or any number of exploration operations within reasonable geographic boundaries as specified by the Department.
- (f) The Department shall prescribe the form and contents of the application for a permit, specifying what information is required for the Department to accept an application for review. Prior to receiving a permit an applicant must complete fully and submit an application in a form approved by the Department.
- (g) The operator shall comply with the provisions of the approved permit and reclamation plan unless waived and explained in writing by the Department. Permits shall be renewed every five years or until fill reclamation is completed.
- (h) Unless fully reclaimed as determined by the Department, the owner of each disturbed area possessing the size or slope characteristics described in (a) of this section for which aggregate development operations occurred since the adoption of this Chapter, shall develop and submit to the Department a water quality permit application including a reclamation plan meeting the standards of this Chapter within twenty-four (24) months of adoption of this code section, whether aggregate development is occurring or the disturbed area is inactive.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-5 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-6 Water Quality Permit Applications

The applicant shall submit the following information to the Department in an application:

- (a) The name of the applicant, including operator, landowner if different, and holder of mineral rights if different; and
 - (1) If the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent of service of process; and
 - (2) If the land is held in trust, the name of responsible official for trustee;
- (b) Proof of ownership of surface and subsurface rights;
- (c) Estimated operations starting date, date of operations completion, and date of start and completion for reclamation;
- (d) Legal description and size of the area within which the aggregate development operation is to be

conducted;

- (e) A topographic map of suitable scale upon which the proposed operation and maximum lateral and vertical extent of the disturbed area are plotted;
- (f) A reasonably accurate description of the materials to be developed;
- (g) Description of the proposed methods of exploration or aggregate development, support facilities, and required construction, including:
 - (1) Proposed location of drilling or excavation, etc.;
 - (2) Equipment to be used;
 - (3) Location of primary support roads, proposed road construction and road design specifications;
 - (4) Location of any buildings, camps and other facilities, and sewage disposal system on the affected lands;
 - (5) Proposed well or wells and estimate of the quantity of water to be used;
 - (6) Name and location of all streams, lakes, wetlands, known groundwater deposits, water wells, power and communication lines, and building on or within five hundred (500) feet of the affected lands; and
 - (7) List with addresses of owners of record of the affected lands and of lands adjoining the affected lands.
- (h) Expected area to be disturbed during each of the five (5) years the permit is valid;
- (i) A description of best management practices to be used to manage runoff, and prevent erosion and pollution;
- (j) A pollution discharge permit application for any anticipated runoff or wastewater discharges to surface waters;
- (k) The reclamation plan and schedule required by this chapter;
- (l) Any applicable NEPA documents;
- (m) A certificate of compliance that the aggregate development operation would be in compliance with the applicable zoning and subdivision regulations; and
- (n) Other pertinent data as required by the Department.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-7 Application Review Process—Approval or Refusal to Approve

- (a) Applications shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general delivery. Applications that are not complete or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application, and fee if required by the Department.
- (b) Upon receipt of a complete application for a permit as determined by the Department, including fee if

required, from the applicant, the Department shall render a final decision on the application not more than ninety (90) calendar days after the date of filing. At that time the Department shall approve, conditionally approve, deny, or partially deny the application.

- (c) The date for making a final decision on an application may be extended in two (2) circumstances;
 - (1) In the event of unforeseen circumstances or significant snow cover on the affected land that prevents a necessary on-site inspection, the Department may reasonably extend the date by which it will render its decision.
 - (2) If for good reason, the Department decides it is necessary to hold a hearing on the question of whether a permit should be granted, the date for making a final permit decision will be extended an additional thirty (30) calendar days.
- (d) If action upon the application is not completed within the ninety (90) day period specified in CTC 4-6-7(b) the applicant may apply to the CEQC and request that the CEQC direct the Department to act on the application within a time period established by the Commission.
- (e) The Department shall grant a permit if the application complies with all requirements of this Chapter and all applicable Tribal and federal laws. The Department shall not deny or partially deny a permit, except for one or more of the following reasons:
 - (1) The aggregate development operation may adversely impact Reservation resources and cannot be adequately mitigated;
 - (2) The aggregate development operation may adversely impact the health of the Reservation population; or
 - (3) The aggregate development operation conflicts with a Colville Business Council resolution.
- (f) The Department shall specify application approval conditions when necessary to protect Reservation resources. All approvals are subject to all pertinent provisions of Section 4-6-60 Aggregate Development Standards.
- (g) If the Department denies a permit application, the Department shall so notify the applicant in writing and shall state the reasons for the action. The Department shall list such additional requirements as may be necessary for the conditional approval of the permit. Within thirty (30) calendar days the applicant shall either accept the denial or such additional requirements as part of the approved permit or file a notice of appeal to the CEQC.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-8 Special Sand and Gravel Permits

- (a) Any sand, gravel, or quarry aggregate operation at a previously established aggregate development site which is to be operated for the sole purpose of obtaining materials for highway, road, utility, restoration, or similar type construction for a tribal, federal, state, county, city, town, or special district project or contract requiring work to be commenced within a specifically short time and which will not enlarge the footprint of the disturbed area shall be subject to this Section (4-6-8).
- (b) The applicant shall make written application to the Department for a special permit on forms provided by the Department. The special permit may authorize the operator to engage in such aggregate development operation until such time as the subject governmental contract has been satisfied.
- (c) The special sand and gravel application form shall include:

- (1) The name and address of the owner of the surface of the affected land;
 - (2) The name and address of the owner of the subsurface rights of the affected land;
 - (3) The name and address of the project manager or contractor;
 - (4) Proof of ownership of surface and subsurface rights;
 - (5) The contract or project name;
 - (6) The approximate area of affected land, and amount of material to be removed;
 - (7) A map showing information sufficient to determine the location of the affected land on the ground streams and other waters, utilities, and existing and proposed roads or access routes to be used in connection with the aggregate development operations;
 - (8) Information sufficient to describe or identify the type of aggregate development operation proposed and how it would be conducted;
 - (9) A description of best management practices to be used to manage runoff, and prevent erosion and pollution;
 - (10) The terms of the governmental project or contract which make a special permit necessary;
 - (11) A description of any reclamation work that will be conducted as part of the contract.
 - (12) Evidence of any performance bond required under the governmental contract; and
 - (13) A certificate of compliance by the Colville Planning Department that the aggregate development operation would be in compliance with the applicable zoning and subdivision regulations.
- (d) The Department shall promptly act upon those special permits so that they may be issued within ten (10) business days of the date that a complete application is submitted. Such timely review by the Department is dependent upon the application, map, fee, and performance bond all being in proper order and submitted in compliance with this section.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-9 Permit Application Fee

- (a) An application for a new water quality permit shall be accompanied by a nonrefundable application fee of five hundred dollars (\$500).
- (b) Applications to renew or revise a current application shall be accompanied by a nonrefundable application fee of two hundred-fifty (\$250) dollars.
- (c) No fee shall be required for new applications or renewals for existing aggregate development sites located on government-owned or trust tracts and operated primarily for the purposes described in Section 4-6-8(a).
- (d) Appeals from any determination of the Department shall not stay the requirement to pay any permit fee. Failure to pay the required fee may constitute grounds for an order to suspend aggregate development practices, pay fines, or cancel the water quality permit as provided in the Chapter.

- (e) Application fees shall be utilized by the Department to cover costs of administration, inspection, and similar matters.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-10 Notice of Application

- (a) Upon the filing of the application for a permit with the Department, a copy of such application shall be available for public inspection at the office of the Department.
- (b) Following the Department's acceptance of a completed application for a new aggregate development site, expansion or reclamation of an existing aggregate development site, and approval of the form of public notice, the applicant shall cause notice of the filing of its application with the Department to be published in the Tribal Tribune once a week for four (4) consecutive weeks, commencing not more than ten (10) days after filing the application with the Department. At the Department's discretion, the applicant shall also publish notice of the filing of its application in at least one (1) other local newspaper of general circulation in the locality of the proposed exploration or aggregate development operation once a week for four (4) consecutive weeks, commencing not more than ten (10) business days after the filing the application with the Department. Such notice shall contain information regarding the identity of the applicant and the Department. Such notice shall contain information regarding the identity of the applicant and the location of the proposed exploration or aggregate development operation, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location where additional information about the operation may be obtained, and the location, and final date for filing objections with the Department. Public notice shall not be required for renewal of water quality permits, or where zoning and land use for aggregate development has been approved.
- (c) The applicant shall mail a copy of such notice immediately after first publication to all owners of the surface rights of the effected land, to all owners of the mineral rights of the affected land if different than surface rights owners, to the owners of record of immediately adjacent lands, and to any other persons who are owners of record that may be designated by the Department whose lands might be affected by the proposed exploration or aggregate development operation. Proof of such notice and mailing, such as certified mail with return receipt requested where possible, shall promptly be provided to the Department and shall become part of the application.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-11 Protests and Petitions for a Hearing

- (a) For good cause shown in writing, the Department may hold a hearing on the question of whether a permit should be granted. Prior to the holding of any such hearing, the Department shall provide notice to any person who previously submitted either written comments or who requested a hearing regarding the application of the time, date, and place of the hearing.
- (b) Any person has the right to submit written comments to the Department with regard to any application made to the Department for a water quality permit under this Chapter. In addition, any person may request in writing that the Department hold a public hearing with regard to such application. In order to be considered timely and this be considered by the Department, all such written comments and requests for public hearing regarding the proposed issuance of any water quality permit under this Chapter shall be submitted to the Department not more than ten (10) business days after the date of the last notice published by the applicant pursuant to section 4-6-10(b). The applicant shall be notified within ten (10) business days of any written comments or request for public hearing submitted in response to his or her application and be supplied with copies of all such documents.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-12 Performance Bonds

- (a) Upon receipt of any water quality permit or special sand and gravel permit, an operator shall not

commence exploration or aggregate development until the operator deposits with the Department an acceptable performance bond on forms prescribed by the Department in an amount deemed adequate by the Department.

- (b) The Department shall have the authority to determine the amount of the bond that shall be required, and may refuse any bond not deemed adequate. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be disturbed during the next twelve (12) month period and any previously disturbed area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. If an operator increases the area to be explored or developed during the twelve (12) month period, the Department may require an increase in the amount of the bond to compensate for the increase.
- (c) Acceptable performance bonds are:
 - (1) A cash deposit;
 - (2) Bank letters of credit, or assignment of a saving account or of a savings certificate on an assignment form prescribed by the Department;
 - (3) A corporate surety bond executed in favor of the Department by a corporation approved by the Department.
- (d) The performance bond shall be conditioned upon the faithful performance of the requirements set forth in this Chapter, the rules adopted under it, and requirements of the water quality permit.
- (e) The Department may determine the amount of the performance bond based on:
 - (1) Its cost estimate of completing reclamation according to the requirements of this chapter;
 - (2) An engineering cost estimate for reclamation that is provided by the operator. The engineering cost estimate must be prepared using engineering principles acceptable to the Department.
- (f) The Department may recalculate a performance bond based on 4-6-10(f). When the Department recalculates a performance bond, the new calculation will not be prejudiced by the existence of any previous calculation. A new performance bond must be submitted to the Department within thirty (30) calendar days of the Department's written request.
- (g) An operator, in lieu of an individual performance bond for each aggregate development site, may file a blanket performance bond with the Department for their group of permits.
- (h) At its discretion the Department may waive performance bonds for small scale aggregate development operations performed by Tribal, State, City, or County governments and for aggregate development operations permitted under section 4-6-8 of this Chapter.
- (i) Liability under the performance bond and the operator's obligation to maintain the calculated performance security amount shall be maintained until reclamation is complete as determined by the Department. Liability under the bond may be released only upon written notification from the Department. Notification shall be given upon completion of compliance or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.
- (j) The Department shall keep a record of all expenses incurred in carrying out any reclamation project. The Department shall refund to the operator or surety all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred the Department may:

- (1) Request the Office of Reservation Attorney to bring an action against the operator on behalf of the Tribes to recover the remaining costs; or
- (2) Have a lien established in favor of the Department upon all of the operator's real and personal property. The notice of lien claim must contain a true statement of the demand, the insufficiency of the performance bond to compensate the Department, and the failure of the operator to perform the reclamation required. The lien becomes effective when filed.
- (k) Any interest or appreciation on the performance bond shall be held by the Department until reclamation is complete. If the operator meets its obligations under this Chapter, rules adopted under this Chapter, and the approved reclamation plan and water quality permit by completing reclamation, the Department will return any unused performance bond and accrued interest or appreciation.
- (l) In the event that any performance bond submitted by the operator to the Bureau of Indian Affairs is deemed adequate for the purpose of this Chapter, compliance with the performance bond requirements of this Chapter may be reduced or waived by the Department.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-13 Permits Subject to Modification – Permit Termination

- (a) Deviations from the approved permit and reclamation plan may only occur with prior written approval from the Department.
- (b) An approved water quality permit and reclamation plan may, after consultation with the applicant, be modified by the Department at any time during the term of such permit for one or more of the following reasons:
 - (1) To modify the requirements of the permit so that they do not conflict with existing law;
 - (2) The Department determines that the approved permit is inconsistent with the intent and purpose of this chapter, or that additional measures are required to protect Reservation resources;
 - (3) The Department determines that the previously approved permit is impossible or impracticable to implement; or
 - (4) The operator and the Department mutually agree to modify the terms of the permit.
- (c) An approved water quality permit and reclamation plan may be terminated by the Department at any time during the term of such permit for one or more of the following reasons:
 - (1) Noncompliance by the permittee with any condition of the permit;
 - (2) Misrepresentation or omission of relevant facts by the permittee;
 - (3) Determination that the permitted activity endangers human health or the environment, and can be regulated to acceptable levels only by permit termination;
 - (4) Determination that the operator will be prevented from carrying out its obligations under the permit due to a force majeure, including Acts of God, acts of the public enemy, wars, riots, epidemics, or federal or tribal regulation or resolution.
- (d) The Department shall determine if the permit modification or termination merits public notice or a hearing.
- (e) The decision by the Department may be appealed to the Colville Environmental Quality Commission

(CEQC) pursuant to section 4-6-30.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-14 Transfer of Permit

No transfer, sale, or other assignment of the rights granted under any water quality permit, or special sand and gravel permit issued pursuant to the Chapter is permitted under this Chapter.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-15 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-16 Reclamation Specifics – Basic Objectives – Timeline

- (a) The applicant shall provide a reclamation plan and schedule acceptable to the Department when applying for a water quality permit. The Department shall have sole authority to approve reclamation plans required by this Chapter. Reclamation plans shall meet or exceed the minimum reclamation standards set forth in this Chapter. The Department shall solicit comment from Tribal and BIA programs prior to approving a reclamation plan.
- (b) The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective is to maintain or reestablish on a continuing basis the vegetative cover, soil and slope stability, water conditions and quality, air conditions and quality, and safety conditions that meet or exceed standards set by Tribal Code. For resources that are irreparably altered or destroyed, i.e., they cannot be reclaimed, the Department may require the permittee to purchase replacement resources off of the aggregate development site.
- (c) Each operator shall comply with the minimum reclamation standards in effect on the date the permit was issued or renewed, any additional reclamation standards set forth in the approved reclamation plan, and the approved schedule for reclamation.
- (d) Reclamation activities, particularly those relating to control of erosion and mitigation of impacts of aggregate development to adjacent areas, waters, and air, shall, to the extent feasible, be conducted simultaneously with aggregate development, and in any case shall be initiated at the earliest possible time after completion of aggregate development on any segment of the permit area.
- (e) All reclamation activities shall be completed not more than two (2) years after completion or abandonment of aggregate development on each segment of the area for which a water quality permit is in force.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-17 Aggregate Development Reclamation Plan Requirements

- (a) The reclamation plan for aggregate development shall include:
 - (1) A description of the sequence of aggregate development that will provide, within limits of normal procedures of the industry, for completion of aggregate development and associated disturbance on each portion of the permit area so that reclamation can be initiated at the earliest possible time in each segment;
 - (2) Where aggregate development is contemplated within critical aquifer recharge areas, protective measures that will protect groundwater quality as defined by the Department;
 - (3) A timetable indicating when the reclamation plan will be implemented;
 - (4) A schedule of progressive reclamation of each segment of the disturbed area;

- (5) Description of proposed equipment planned for reclamation;
 - (6) Positions of reclamation buffers and screening;
 - (7) Plan for erosion and drainage control, and slope stabilization;
 - (8) Disposal of exploration and aggregate development wastes;
 - (9) Plan and specifications of reclaimed topography;
 - (10) Airborne particulate material prevention and control plan;
 - (11) Maps of the proposed aggregate development site showing:
 - (A) Existing and proposed topographic contours;
 - (B) Locations and names of all roads and utility lines on or adjacent to the area;
 - (C) Detailed and accurate boundaries of the permit area, screening, reclamation buffers, and maximum extent of the disturbed area; and
 - (D) Location of surface waters and wetlands.
 - (12) Proposed revegetation plan including species, seed or planting stock, stocking rates, timing, vegetation protection, and invasive species control;
 - (13) Other supporting data and documents regarding the aggregate development site as reasonably required by the Department.
- (b) Reclamation of aggregate development sites addressed by reclamation plans shall meet the following minimum standards except as waived in writing by the Department:
- (1) All topsoil on the site shall be stockpiled for use in reclamation, or used to reclaim adjacent segments, except when the approved subsequent use does not require replacing the topsoil. Stockpiled topsoil shall be seeded as needed to prevent loss due to erosion. Topsoil needed for reclamation shall not be sold as an aggregate nor mixed with sterile soils.
 - (2) The Department may require that clearly visible, permanent monuments delineating the permit boundaries and maximum extent of the disturbed area be set at appropriate places around the aggregate development site. The operator shall maintain the monuments until termination of the water quality permit.
 - (3) Any and all minimum reclamation standards may be waived in writing by the Department in order to accommodate unique and beneficial reclamation measures such as replacement resources, parks, swimming facilities, buildings, and wildlife reserves. Such waivers shall be granted only after written approval by the Department of a reclamation plan describing the variances to the minimum reclamation standards, receipt of documentation of NEPA compliance, and written approval from the landowner(s) if different from operator.
 - (4) In cases where aggregate development operations penetrate the seasonal or permanent water table, creating ponds or wetlands, the Department shall determine if the resulting surface water is beneficial for recreational, fish and wildlife habitat, water quality control, or other wetland purposes, and that any discharges from the impoundment to surface waters will not degrade water quality below water quality standards established pursuant to applicable Tribal or federal law in

the receiving stream. Where the resulting surface water is determined to be beneficial, the Department may approve reclamation in the following manner:

- (A) For slopes that are below the permanent water table in soil, sand, gravel, and other unconsolidated materials, the slope angle shall be no steeper than three (3) foot horizontal to one (1) foot vertical;
- (B) Solid rock banks shall be shaped so that a person can escape from the water;
- (C) Both standpipes and armored spillways or other measures to prevent undesirable overflow or seepage shall be provided to stabilize all such water bodies within the disturbed area; and
- (D) Where lakes, ponds, or swamps are created, the operator shall provide measures to establish a beneficial wetland by developing natural wildlife habitat and incorporating such measures as irregular shoreline configurations, sinuous bathymetry and shorelines, varied water depths, peninsulas, and islands.

(5) All slopes within aggregate development sites shall be reclaimed to the following minimum standards:

- (A) In soil, sand, gravel, and other unconsolidated materials, all reclaimed slopes shall:
 - (i) Have varied steepness;
 - (ii) Have a sinuous appearance in both profile and plan view which blends with the surrounding landscape;
 - (iii) Have no large rectilinear topographic elements;
 - (iv) Generally have slopes of between 2.0 and 3.0 feet horizontal to 1.0 foot vertical or flatter except in limited areas where steeper slopes are necessary in order to create sinuous topography and to control drainage;
 - (v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as necessary to blend with adjacent natural slopes;
 - (vi) Be compacted if significant backfilling is required to produce the final reclaimed slopes and if the Department determines that compaction is necessary.
- (B) Slopes in consolidated materials shall have no prescribed slope angle or height, but where a severely hazardous condition is created by aggregate development operations and that is not indigenous to the immediate area, the slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper slopes shall be acceptable in areas where evidence is submitted that demonstrates that the geologic or topographic characteristics of the site preclude reclamation of slopes to such angle or height or that such slopes constitute an acceptable subsequent use in accordance with Colville Tribal Code Chapter 4-3 Land Use and Development.

(6) The floors of aggregate development sites shall be graded to maximize infiltration of runoff into adjacent soils, to prevent erosion, and avoid direct delivery of runoff or sediment to any typed surface water as defined in Colville Tribal Code Chapter 4-7 Forest Practices.

- (7) Where aggregate development has exposed natural materials that may create polluting conditions, including but not limited to acid-forming coals and metalliferous rock or soil, the Department shall require the operator to complete geochemical and chemical analysis and modeling evaluating all potential pollution discharges, and develop and submit for review a waste rock management plan and schedule. Upon approval by the Department, the operator shall implement the waste rock management plan.
- (8) All grading and backfilling shall be made with non-noxious, non-combustible, and relatively incompactible solids. Final reclaimed slopes should be left roughly graded to trap soil and promote natural vegetation. Final equipment tracks should be oriented in order to trap soil and seeds and to inhibit erosion.
- (9) Topsoil shall be restored across final reclaimed slopes and surfaces to promote effective revegetation and stabilization.
- (10) Reclamation shall include the breaking up of compacted surfaces to foster runoff infiltration and revegetation.
- (11) Drainageways shall be graded and contain adequate energy dissipation devices so that essentially natural conditions of water velocity, volume, and turbidity are reestablished within six (6) months of reclamation of each segment of the aggregate development site. Ditches and other structures shall be constructed on each reclaimed segment to control surface erosion, and siltation and to direct runoff to a safe outlet. Diversion ditches including but not limited to channels, flumes, pipelines, and retention ponds shall be capable of carrying the peak flow that has the probable recurrence frequency of once in one hundred years as determined from data for the 100-year, 24-hour precipitation event.
- (12) Revegetation shall be required as appropriate to stabilize slopes, generate new topsoil, reduce erosion and turbidity, and restore the scenic value of the land to the extent feasible as appropriate to the approved subsequent use. Although the scope of and necessity for revegetation will vary according to the geography, precipitation, and approved subsequent use of the site, the objective of segmental revegetation is to reestablish self-sustaining vegetation and conditions of slope stability, surface water quality, and appearance before release of the reclamation permit. Revegetation shall normally meeting the following standards:
 - A. Revegetation shall commence during the first proper growing season following restoration of slopes on each segment unless the Department has granted the operator a written time extension;
 - B. Revegetation shall be as continuous as reasonably possible as determined by the Department;
 - C. Revegetation shall only include plant species native to the Colville Indian Reservation unless a revegetation composition including other plant species is more likely to achieve the objectives of revegetation specified in this subsection, as approved by the Department; and
 - D. The Department may refuse to release a water quality permit or performance bond until it deems the effective revegetation has been completed.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-18 Compliance—Inspection of Disturbed Area—Report by Operator on Anniversary Date

- (a) The Department may order at any time an inspection of the disturbed area to determine if the operator has complied with the water quality permit and this Chapter.

- (b) Within thirty (30) calendar days after completion or abandonment of exploration or aggregate development on an area under permit or within thirty (30) calendar days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be approved by the Department, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which report shall:
- (1) Identify the operator and permit number;
 - (2) Locate the aggregate development operation(s) by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
 - (3) Update any reports previously submitted or provide such maps as may be specifically requested by the Department. Such maps shall show:
 - (A) The operating permit area;
 - (B) The area disturbed by operations during the reporting period;
 - (C) The area to be explored or developed during the next twelve-month period;
 - (D) Areas that will not be further disturbed by the exploration or aggregate development operations; and
 - (E) Areas where reclamation is occurring, or where reclamation is completed, including:
 - (4) Provide the date of beginning, amount, and status of reclamation performed during the previous twelve (12) months. An operator operating under a combined water quality permit may submit a single annual report, but such report shall include the data required in this section for each operating area, including:
 - (A) The type of planting or seeding, including mixtures and amounts;
 - (B) The date of planting or seeding; and
 - (C) The amount of area planted or seeded.
 - (c) Upon completion of grading and backfilling as may be required by an approved permit and reclamation plan, the operator shall make a report to the Department and request inspection for approval.
 - (d) As soon as possible after the first full growing season following planting and seeding, the Department shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.
 - (e) When it is determined by the Department that backfilling and grading have been carried out in accordance with the established requirements of the permit, or that a satisfactory vegetative cover has been established and is likely to continue to grow, the Department shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled, or revegetated. Appropriate amounts of the bond shall be retained to assure that any remaining reclamation requirements are achieved.
 - (f) At its discretion, the Department may waive annual reporting requirements for operators holding

special sand and gravel permits.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-19 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-20 Enforcement Policy

It is the policy of this Chapter to encourage informal, practical, result-oriented resolution of alleged violations and to encourage actions needed to prevent damage to aquatic resources or harm to the health, safety, or welfare of the Reservation population. It is also the policy of this Chapter, consistent with the principles of due process, to provide effective procedures for enforcement. This Chapter provides the following enforcement procedures: Informal Conferences; Notices to Comply; Stop Work Orders; corrective actions by the Department; civil penalties and orders; and other civil administrative or judicial relief. Enforcement procedures will be carried out by the Department, or other tribal enforcement officials as requested by the Department, or both, following these policies. The enforcement procedure used in any particular case shall be appropriate in view of the nature and extent of the violation or the damage or risk to aquatic resources and the health, safety, and welfare of the Reservation population and the degree of bad faith or good faith or the persons involved.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-21 Informal Conferences

(a) The Department shall afford the applicant and operator or their representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department determines that there may be either imminent environmental damages to an aquatic resource or adverse impact upon the health, safety, and welfare of the Reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may decline to conduct informal conferences with respect to any matter than pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

(b) Department personnel in attendance at informal conferences shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action, mitigation measures, or other resolution of the alleged violation.

(c) Copies of written notes shall be sent to each participant in the conference, but kept in the Department files until one (1) year after final action on the application involved, and be open to public inspection.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-22 Notice to Comply—Contents—Procedures—Hearing—Final Order—Limitations on Actions

(a) Where a violation, deviation from an approved application, or material damage to a Reservation resource or harm to the Reservation population has occurred, or the Department determines that a reasonable potential for such material damage or harm exists as a result of aggregate exploration or development operations, and the Department determines that a Stop Work Order is unnecessary then the Department shall issue and serve upon the operator a Notice to Comply, which shall clearly set forth:

(1) The specific nature, extent, and time of violation or deviation and the damage or potential damage to a Reservation resource or harm to the Reservation population;

(2) The relevant provisions of this Chapter relating thereto;

(3) The right of the operator to a hearing before the Department; and

(4) The specific course of action violation or deviation, and to prevent, correct, and compensate for material damage to Reservation resources or harm to the Reservation population which

resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource; and/or those courses of action necessary to prevent continuing damage to Reservation resources or harm to the Reservation population where the damage is resulting from circumstances that could not be reasonably foreseen at the time of the approval of the application.

- (b) The Department shall mail a copy thereof to the land owner and holder of mineral rights if different at the addresses shown on the application, showing the date of service upon the operator. The operator shall undertake the course of action so ordered by the Department unless, within fifteen (15) calendar days after the date of service of such Notice to Comply, the operator, landowner if different, or holder of mineral rights if different, shall request the Department in writing to schedule a hearing. If so requested the Department shall schedule a hearing on a date not more than twenty (20) calendar days after receiving such request. Within ten (10) business days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed. Such interim order shall become final ten (10) calendar days after its issuance and the operator or owner shall undertake the course of action so ordered by the Department unless within this ten (10) day period the operator, landowner if different, or holder of mineral rights if different elects to exhaust his administrative remedies by appealing such interim order to the Colville Environmental Quality Commission. The order of the Colville Environmental Quality Commission shall be final agency action from which there is the right of judicial review.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-23 Stop Work Order—Grounds—Contents—Procedure—Appeals

The Department shall have the authority to serve upon an operator or applicant a Stop Work Order if there is any violation of the provisions of this Chapter or a deviation from the approved application, or immediate action is necessary to prevent continuation of or to avoid material damage to water quality, aquatic resources, cultural resources, or harm to the Reservation population.

- (a) The Stop Work Order shall set forth:

- (1) The specific nature extent, and time of the violation, deviation, damage, or potential damage;
- (2) An order to stop all work in connection with the violation, deviation, damage, or potential damage;
- (3) The specific course of action required to correct such violation or deviation or to prevent, correct, and compensate for damage to aquatic resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to an aquatic resource or potential harm to the Reservation population; or those courses of action necessary to prevent continuing damage to aquatic resources or harm to the Reservation population where the damage is resulting from the exploration or aggregate development activity but has not resulted from any violation, unauthorized deviation, or negligence; and
- (4) The right of the applicant or operator to a hearing before the Colville Environmental Quality Commission. The Department shall immediately serve a copy of such order on the applicant at the address shown on the application. Included with this copy shall be notification of the right of the operator or applicant to file an appeal with the Colville Environmental Quality Commission as provided under Chapter 4-23 of the Colville Tribal Code. If such appeal is commenced, a hearing shall be held not more than twenty (20) calendar days after a Notice of Appeal is served on the Department. The operator shall comply with the Stop Work Order immediately upon being served, but the Colville Environmental Quality Commission, if requested, shall have authority to stay, in whole or in part, the order of the Department as provided in Chapter 4-23 of the Colville Tribal Code.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-24 Failure to Obey Stop Work Order—Department Action Authorization to Complete Course of Action—Liability of Owner for Costs

If an operator fails to undertake and complete any course of action as required by a final order of the Department or a final decision of the CEQC, the Department may determine the cost thereof and give written notice of such cost to the operator. If such operator fails within thirty (30) calendar days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action and such operation shall be liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorney's fees, expert witness or consultant fees, laboratory and technical costs, investigatory and other actual cost incurred by the Department.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-25 Failure to Obey Stop Work Order—Department Action Authorized—Liability of Owner or Operator for Costs

When the operator or applicant has failed to obey a Stop Work Order the Department may take immediate action to prevent continuation of or avoid material damage to Reservation resources or adverse impact on the health, safety, and welfare of the Reservation population. If a final order or decision fixes liability with the operator or applicant, they shall be jointly and severally liable for such costs which may be collected in any manner provided for in Tribal law.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-26 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-27 Inspection—Right of Entry

- (a) The Department shall inspect affected lands, before, during, and after the conducting of aggregate exploration or development operations as necessary for the purpose of ensuring compliance with this Chapter and to ensure that no material damage shall occur to aquatic resources or the health, safety, and welfare of the Reservation population as a result of such practices.
- (b) Any duly authorized representative of the Department shall have the right to enter upon land at any reasonable time to enforce the provisions of this Chapter. All applications under this Chapter shall include a statement by which the applicant acknowledges the right of the Department to enter upon the applicant's land as set forth herein.
- (c) In the event a duly authorized representative of the Department is denied access to enter upon any lands at reasonable times to enforce the provisions of this Chapter, the Department may apply to the Colville Tribal Court for a civil search warrant. The Colville Tribal Court shall have authority to issue such search warrant upon a showing of probable cause that a violation of this Chapter has occurred or is occurring.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-28 Remedial Action—Monetary Damages—Right to Appeal

- (a) Every person who fails to comply with the provisions of this Chapter, as now or hereafter amended, shall be required to pay civil monetary damages in the full amount of the costs of detecting and mitigating, restoring or repairing any potential or actual damages directly or indirectly resulting from such violations, plus the administrative costs of enforcement including but not limited to investigatory costs, expert witnesses, laboratory and technical analysis, pre and post violation monitoring, collection of such damages, and attorney's fee.
- (b) In the event a specific monetary value cannot readily be placed on such damages, such violating person

shall be required to pay civil monetary damages in the minimum liquidated amount of one thousand dollars (\$1,000) per day for each day that such violation takes place. Each day of such operation shall constitute a separate violation. In the case of a failure to comply with a written order or decision of the Department, every day's continuance after service of the written order or decision shall be a separate and distinct violation.

- (c) The remedial action provided for by this section shall be initiated by the Department by notice in writing to the alleged violator either by certified mail with return receipt requested or by personal service and such notice shall describe the alleged violation with reasonable particularity. The person alleged to be in violation of this Chapter, who receives such notice for civil damage pursuant to this section, may within thirty (30) calendar days of receipt of such notice apply in writing to the Department for the remission or mitigation of such remedial action. Upon receipt of such application, the Department may remit or mitigate the remedial action upon whatever terms the Department in its discretion deems proper; Provided, that the Department must specifically find and set forth in writing that such remission or mitigation is in the best interests of the Tribes and is consistent with the purpose of the Chapter. Any civil monetary damages imposed hereunder shall become due and payable thirty (30) calendar days after receipt of such notice or thirty (30) calendar days after the conclusion of any administrative or judicial appeal.
- (d) Any person subject to any civil remedial action pursuant to section 4-6-25 may appeal to the CEQC. Such appeals shall be filed within thirty (30) calendar days of receipt of notice imposing any civil monetary damages unless an application for remission or mitigation has been timely filed with the Department. Where such an application for remission or mitigation has been made in a timely manner, any appeal to the Colville Environmental Quality Commission from such initial administrative review shall be filed within thirty (30) calendar days of receipt of the Department's disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action of purposes of judicial review.
- (e) If the full dollar amount of any civil damages or other compensation due under this section is not paid to the Department within thirty (30) calendar days after it becomes due and payable, the Department shall request that the Reservation Attorney bring action in the Colville Tribal Court to recover such compensation.
- (f) Monetary damages imposed in amounts that exceed actual rehabilitation costs will be placed into a separate account for rehabilitation purposes related to aquatic resources and administered by the Department.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-29 Enforcement

Upon the request of the Department and subject to the approval of the Colville Business Council, the Office of Reservation Attorney or its designee, may bring an action in Colville Tribal Court to enforce any final order issued under this Chapter.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-30 Administrative Appellate and Judicial Review

- (a) Any person aggrieved by any order, decision, or other final action of the Department under this Chapter may obtain administrative appellate review thereof by submission of a timely Notice of Appeal to the Colville Environmental Quality Commission pursuant to Chapter 4-23 of the Colville Tribal Code. Such petition for administrative review shall be filed with the Chairman of the Colville Environmental Quality Commission within thirty (30) calendar days of the date of the order, decision, permit, or other action which is the subject of such appeal, unless a shorter time for such appeal is set forth in any other section of this Chapter, in which case the shorter time shall apply. Exhaustion of such administrative remedies is a jurisdictional requirement to judicial review.

- (b) Any person directly affected by any final order, final decision or other final action of the Colville Environmental Quality Commission may obtain judicial review of such order, decision or action by filing a timely petition with the Colville Tribal Court pursuant to the Colville Administrative Procedure Act. Such petition for judicial review shall be filed with the Court, as a civil matter under the Colville Tribal Code, within twenty (20) calendar days of the decision of the Colville Environmental Quality Commission. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Colville Environmental Quality Commission shall be binding upon all parties.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-31 Cooperation with Public Agencies—Grants and Gifts

Subject to approval of the Colville Business Council the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purpose of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. Subject to approval by the Colville Business Council, the Department is further authorized to negotiate inter-governmental agreements provided, that any change to the requirements of the Chapter shall require a Code revision by the Colville Business Council.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-32 Federal Laws and Trust Responsibility Not Modified

Nothing in this Chapter as now or hereafter amended shall modify or waive any requirement to comply with applicable federal laws and regulations, or be construed to modify, waive, or impair the trust responsibility of the United States.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-33 Severability

If any provision of this Chapter, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of the Chapter are declared to be severable.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

AGGREGATE DEVELOPMENT STANDARDS

4-6-60 Aggregate Development Standards

The following standards shall be required for all mining operations:

- (a) All aggregate development shall be subject to provisions of Colville Tribal Code Chapter 4-3 Land Use and Development.
- (b) Nothing in this Chapter shall exempt aggregate development from any other applicable provision of the Tribal Law and Order Code.
- (c) All aggregate exploration and development operations shall be located and designed to avoid sensitive areas or setbacks as determined by the Department in consultation with the Tribal Historic Preservation Officer and other departments or based upon information provided by the public in writing or during a public hearing conducted with regard to a water quality permit application.
- (d) Aggregate development shall be kept outside the floodplain as defined in Colville Tribal Code Chapter 4-15 Shoreline Management, ordinary high water mark of any typed surface water, and channel migration zones and Riparian Management Zones as defined in Colville Tribal Code Chapter 4-7 Forest Practices.
- (e) Roads and stream crossings used for aggregate development operations shall meet or exceed the requirements outlined in Colville Tribal Code Chapter 4-7 Forest Practices and Colville Tribal Code Chapter 4-9 Hydraulic Projects, or as otherwise required by the Department.

- (f) Site-specific plans for site erosion and sediment control shall be developed and implemented. Measures that shall be considered during planning, construction, operations, and closure phases include:
- (1) Determining site erosion potential and identifying water bodies at risk;
 - (2) Re-contouring to reduce the susceptibility of soil to erosion;
 - (3) Minimizing disturbance to natural vegetation and vegetating disturbed areas;
 - (4) Vegetating or revegetating and maintaining vegetated buffer zones 200 feet to any water body or natural wetland for erosion control;
 - (5) Avoiding placement of fill or spoils in drainage ways;
 - (6) Minimizing slope steepness and slope length;
 - (7) Diverting site drainage away from cleared, graded, or excavated areas and using temporary structures to reduce runoff velocities;
 - (8) Keeping sediment on site by using and maintaining settling ponds, check dams, or sediment barriers to control erosion and sedimentation;
 - (9) Minimizing soil exposure during high precipitation and snow melt; and
 - (10) Monitoring and maintaining the measures once they are in place to ensure they are effective.
- (g) All drainage from active exploration or aggregate development operations shall be treated in impoundment or treatment facilities before discharge into a water course. Under no circumstances should water be discharged into highly erodible soil or spoil banks. Water impoundment and treatment facilities, such as collection basins, water retarding structure or siltation dams, may be created, if authorized in the approved permit. Before such approval may be granted, it must be adequately demonstrated to the satisfaction of the Department that:
- (1) The size of the impoundment is adequate for its intended purpose;
 - (2) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety, including spillway or other devices to protect against washouts during the one hundred (100) year flood event;
 - (3) The quality of impounded water will be suitable on a permanent basis for its intended uses and that discharges from the impoundment will not degrade water quality below water quality standards established pursuant to applicable Tribal or federal law in the receiving stream;
 - (4) The level of the water will be reasonably stable;
 - (5) Final grading will provide safe access for proposed water users; and
 - (6) Such water impoundments will not result in diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, domestic or other uses.
- (h) Site-specific wind protection structures shall be implemented and maintained to reduce airborne

particulate material emissions when required by the Department. Such structures may include:

- (1) Berms with trees and vegetation either placed or left in place;
 - (2) Barriers, such as fences, around activities that might produce airborne particulate material such as screening and crushing; or
 - (3) Mulch covering of exposed soil or surfaces producing airborne particulate material.
- (i) Clearing and grubbing, and stripping of topsoil and overburden shall be conducted immediately prior to aggregate development; clearing activities shall take place during dryer seasons and, where feasible, during times of little to no wind.
 - (j) Gasoline, diesel oil, petroleum products and toxic chemicals stored on site will be stored in durable tanks or containers and within an area surrounded by dikes to contain or prevent escape in case of a spill or leak. In the event that a spill occurs the Environmental Trust Department shall be notified immediately by the operator.
 - (k) Contamination of Reservation resources shall be prevented. Fuels, lubricants, coolants and other pollutants shall not be allowed to wash into any water or waterway, seep into the soil, or kill vegetation, fish or wildlife. Operators shall be responsible to collect, store, and dispose of trash, pollutants, and other inorganic refuse resulting from aggregate exploration or development operations in accordance with Colville Tribal Code 4-13 Solid Waste.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-61 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-62 [Reserved]

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)

4-6-63 Prohibited Acts

- (a) So-called “recreational” or “hobby” mining is prohibited; however, individuals may pan for gold on property to which they hold undivided surface and mineral rights. In any case the use of mechanized dredging, suction dredging, panning, hydraulic mining or sluicing equipment is prohibited.
- (b) All precious/based metals exploration, mining, and milling operations are prohibited.
- (c) Mining of peat and associated wetland organic material is prohibited.
- (d) Fossil excavation and/or removal are prohibited unless authorized by a permit under this act.
- (e) Mining and collection of precious and semi-precious gems and stones are prohibited except for collection for personal and cultural use.

(Amended 6/7/18, Certified 6/8/18, Resolution 2018-365)