

CHAPTER B. WATER QUALITY

PART 11. GENERAL PROVISIONS FOR WATER QUALITY

SECTION 11.1 INTRODUCTION TO THIS CHAPTER

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[Authority: This Part is based on Subtitle B of the Tribal Water Code, and will take effect upon adoption by the Tribal Council and approval by EPA. Water quality standards which are independent of CWA authority, such as those for cultural or religious purposes or for the regulation of nonpoint sources, will take effect upon adoption by the Tribal Council.]

SECTION 11.1 INTRODUCTION TO THIS CHAPTER

Chapter B of the Commission's Rules is intended to restore, protect and enhance the quality of the water resources of the Seminole Tribe's Reservations. This Chapter establishes provisions of law to protect these waters for the benefit of present and future generations of the Seminole Tribe, and for the benefit of the general public.

(a) General Provisions. Part 11 of this Chapter includes general provisions, including definitions that apply throughout this Chapter. In addition, the provisions of Chapter A of the Commission's Rules are generally applicable to the Tribe's water quality program. For example, the definitions for certain terms used in Chapter B are set out in section 1.3 of Chapter A. Similarly, decisions by the Director and Commission are subject to the grievance and appeal procedure set out in Part 3 of Chapter A and the hearings procedures set out in Part 5. Violations of provisions of Chapter B are subject to enforcement under Part 4 of Chapter A.

(b) Water Quality Standards. Part 12 sets out the Tribe's "water quality standards" for the surface waters of the Tribe's Big Cypress and Brighton Reservations. This term is defined in Section 11.5. Water quality standards for the Tribe's four remaining Reservations (Hollywood, Immokalee, Tampa and Fort Pierce Reservations) will be set at a later date. Water quality standards are provisions of substantive law. In the Tribal Water Code, the Tribal Council delegated to the Commission the authority to set these standards. It is a violation of Tribal law for any person to carry on any activity within the Tribe's Reservations that causes a violation of the Tribe's water quality standards. Such activity may also be a violation of Federal law.

(c) Procedure for Certification of Compliance. Some provisions of law contained in this Chapter are procedural in nature, including the procedure through which persons whose activities may affect surface waters may obtain "certification" that what they plan to do will not violate the Tribe's water quality standards. In order to obtain certification a person may be required to agree to certain conditions recommended by the Department. Failure to obtain certification for any activity covered by this Chapter, or failure to comply with any conditions imposed by the Department, will constitute a violation of this Chapter and will render the violator subject to enforcement action by the Department and the Commission. For any case in which it is not clear whether certification is required for a proposed activity, this Chapter provides a procedure through which a person may voluntarily apply for certification and by doing so, ensure compliance with this Chapter.

(d) Transportation Safety Permit Program. Part 19 of this Chapter establishes a permit program for trucks that haul sewage sludge on the roads of any of the Tribe's Reservations.

[Note: Part 19 was adopted by the Commission on Sept. 21, 1994, and ratified by the Tribal Council by Resolution No. C.-95-95, Jan. 12, 1995.]

SECTION 11.2 APPLICABILITY

This Chapter applies to all surface waters, including wetlands, within the exterior boundaries of the Tribe's Big Cypress and Brighton Reservations. This Chapter applies to all persons, whether or not members of the Tribe, who engage in activities that may affect the quality of reservation surface waters.

SECTION 11.3 AUTHORITY

The Tribe has received authorization to be treated as a State for the purpose of establishing and enforcing water quality standards on its reservations under the authority of Section 518(e) of the Clean Water Act. Accordingly, Section 303 of the Clean Water Act provides the Tribe the authority to adopt and modify water quality standards, which are applicable to control both point and nonpoint sources of pollutants. The Clean Water Act provides the regulatory authorization for point source pollution control. For nonpoint source pollution control, Part 17 of the Tribal Water Code provides the regulatory authority and requires the implementation of a program to address nonpoint source pollution in accord with Part 130 of EPA's regulations (40 CFR 130). Further, the Tribal Council has delegated to the Commission the authority to issue the rules contained in this Chapter. Specifically, Section 12.1 of the Tribal Water Quality Code (Subtitle B of the Tribal Water Code) delegates authority to the Commission, and Section 12.3 of the Tribal Water Quality Code directs the Commission to issue these rules.

SECTION 11.4 POLICY AND GOALS

(a) National Goals. The Tribal Council has endorsed the Congressional declaration of goals and policy in the Clean Water Act (33 U.S.C. § 1251), in particular:

(1) the national goal that the discharge of pollutants into navigable waters be eliminated;

(2) the interim national goal of water quality that provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water (commonly known as the goal of "fishable-swimmable" water quality);

(3) the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so that the goals of the Clean Water Act can be met through the control of both point and nonpoint sources of pollution.

(b) Tribal Policies. In addition to the National goals and policy, the Tribal Council has declared the following tribal water quality policies:

(1) It is the policy of the Seminole Tribe to protect the quality of the surface waters and groundwater on the Reservations in order to support the efforts of the Tribe to pursue economic development, because economic development and environmental protection cannot be pursued in isolation but, rather, are necessarily interrelated.

(2) It is the policy of the Seminole Tribe to maintain water quality for the conservation of the habitat of culturally important fish and wildlife and for the conservation of culturally important plant life, in order to protect the right of each member of the Tribe to carry on hunting, fishing and other traditional Seminole cultural practices.

(3) It is the policy of the Seminole Tribe to prohibit the degradation of groundwater, because the quality of groundwater is important for many purposes, including human consumption, and because restoring the quality of groundwater after it has been contaminated is both costly and technically difficult.

(4) It is the policy of the Seminole Tribe to ensure that the functions and values of wetlands will be protected because wetlands provide a variety of environmental benefits, including wildlife habitat and recharge of groundwater. When any activities that are subject to these rules may result in adverse impacts on wetlands, such impacts will be considered fully prior to allowing the activities to proceed. Any such adverse impacts should be avoided if practicable, and, where avoidance is not practicable, appropriate mitigation measures shall be planned and implemented.

(5) It is the policy of the Seminole Tribe that all tribal activities relating to water quality be consistent with the rights, entitlements and obligations of the Tribe under the Water Rights Compact with the State of Florida and the South Florida Water Management District.

(c) Purposes. This Chapter of the Commission's rules is intended to carry out the purposes of the Tribal Water Quality Code, which are:

(1) to protect the health and welfare of members of the Seminole Tribe and others who reside or conduct business within the Tribe's Reservations;

(2) to provide appropriate protection for aquatic life and wildlife within the Tribe's Reservations;

(3) to protect the rights of tribal members to carry on traditional cultural activities and to protect the wild plants and wildlife and other aspects of the natural environment that are important for carrying on traditional cultural activities;

(4) to ensure that development activities that may be carried out by the Tribe to enhance the general welfare of Reservation communities, or that may be carried out by private persons pursuant to the Tribal Land Use Code, will not result in violations of Tribal water quality standards.

SECTION 11.5 DEFINITIONS

The term ***the Act*** means the ***Clean Water Act (CWA)***, as amended, 33 U.S.C. 1251 *et seq.*, which is also known as the Federal Water Pollution Control Act (FWPCA).

The term **acute** refers to a stimulus severe enough to rapidly induce an effect; in aquatic toxicity tests, an effect observed in 96-hours or less is typically considered acute. When referring to aquatic toxicology or human health, an acute affect is not always measured in terms of lethality.

The term **aquatic community** means an association of interacting populations of aquatic organisms in a given water body or habitat.

The term **background conditions** means the biological, chemical, and physical conditions of a waterbody, upstream from the point or nonpoint source discharge under consideration.

The term **best management practice (BMP)** means methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

The term **biological integrity** means the condition of the aquatic community inhabiting unimpaired waterbodies of a specified habitat as measured by community structure and function.

The term **ceremonial and religious use** means a particular use of a waterbody by members of the Seminole Tribe that because of its unique diverse plant and wildlife has a historic, cultural or religious significance.

The term **chronic** means a stimulus that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of an organism. The measurement of a chronic effect can be reduced growth, reduced reproduction, etc., in addition to lethality.

The term **criteria** means elements of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

The term **designated uses** means those uses specified in water quality standards for each waterbody or segment whether or not they are being attained.

The terms **discharge of a pollutant** and **discharge of pollutants** each mean any addition of any pollutant to navigable waters from any point source.

[Note: The EPA definition includes language excluding discharges from vessels into waters of the contiguous zone or the ocean. Since no such waters are within the jurisdiction of the Tribe, that language has been omitted from the definition in this section.]

The term **diversity** means the number and abundance of biological taxa in a specified location.

The term **effluent limitation** means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States".

[Note: The EPA definition includes language regarding discharges into waters of the contiguous zone or the ocean. Since no such waters are within the jurisdiction of the Tribe, that language has been omitted from the definition in this section.]

The term **existing uses** means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.

[Note: The date November 28, 1975, is stated in the definition of this term in EPA's regulations. 40 C.F.R. § 131.3(e). This date applies to all waters of the United States; the reason that EPA uses this date has to do with the early implementation of the Clean Water Act of 1972 -- it was the effective date of the EPA rule implementing the section 402 NPDES permit program.]

The term **federal license or permit** means any license or permit granted by an agency of the Federal Government to conduct any activity which may result in any discharge into the waters of the United States.

The term **federal licensing or permitting agency** means any agency of the Federal Government to which application is made for a license or permit.

The term ***geometric mean*** means the Nth root of the product of N numbers.

The term ***hazardous substance*** means any substance designated under 40 CFR part 116 pursuant to section 311 of the CWA.

The term ***irrigation cell*** means a natural or manmade wetland into which surface water runoff may be diverted. Water from an irrigation cell may be reused, stored or discharged into a water resource area.

The term ***mixing zone*** means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring. A mixing zone defines the location where a discharge, which may exceed numeric limits, can mix with water of higher quality so that dilution can occur.

The term ***National Pollutant Discharge Elimination System (NPDES)*** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the CWA.

The term ***navigable waters*** means the waters of the United States.

The term ***nonpoint source*** means any source of pollutants into Reservation surface waters other than a point source.

The term ***Outstanding National Resource Waters (ONRW)*** means high-quality or ecologically unique waters, such as those within the jurisdiction of National and State parks and wildlife refuges including swamps or hot springs. The primary intent of establishing ONRWs is to protect waters having special environmental, cultural or recreational attributes.

The term **owner or operator** means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

The term **pH** means the negative logarithm of the effective hydrogen-ion concentration. Used to express acidity (values less than 7) and alkalinity (values greater than 7).

The term **person** means an individual, association, partnership, corporation, municipality, tribal, state or federal agency, or an agent or employee thereof.

The term **point source** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (See 40 C.F.R. §122.3).

The term **pollutant** means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of Section 312 of the Act; or (B) water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes, has been approved under authority of the federal Safe Drinking Water Act or other applicable federal law, and if such Commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

The term **pollution** means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

The term **publicly owned treatment works ("POTW")** means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state, tribe or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

The term **Reservation surface waters** means "Waters of the United States" that are located within the boundaries of the Tribe's Reservations specified in Section 11.2 of this Chapter. This term specifically includes wetlands.

The term **Section 304(a) criteria** means criteria that are developed by EPA under authority of section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on a particular aquatic species and/or human health. This information is issued periodically to the states and tribes as guidance for use in developing criteria.

The term **toxic pollutant** means any pollutant listed as toxic under section 307(a)(1) of the Act or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA.

The term **water resource area** means a feature that has been designed as a component of the Tribe's Water Conservation System Conceptual Plan on the Big Cypress Reservation for the dual purposes of: (1) removal/assimilation of nutrients, especially phosphorus, in water that has been used for agricultural purposes; and (2) storage of water for agricultural uses.

The term **water quality limited segment** means any segment of a body of water where it is known that water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

The term **water quality management (WQM) plan** means a tribal waste treatment management plan developed and updated in accordance with the provision of sections 205(j), 208 and 303 of the Act and Part 14 of the Tribal Water Code.

The term **water quality standards (WQS)** means provisions of tribal, state or federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

The term **waters of the United States or waters of the U.S.** means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadow, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) From which fish or shellfish are or could be taken and sold interstate or in foreign commerce; or
 - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial seas; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

The term **wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.