

TRIBAL CODE

AN ORDINANCE TO ESTABLISH THE LAC DU FLAMBEAU WATER AND
SEWER AUTHORITY

CHAPTER 91

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History.

Current Ordinance:

Adopted December 14, 1981, Resolution No. 295(81).

Adopted October 9, 1995, Resolution No. 403(95), Water Use and Water Service Charge Ordinance and a Sewer Use and Sewer Service Charge Ordinance pertaining only to Tribal members (separate ordinances for non-tribal members will be addressed at a later date) effective immediately.

Adopted April 14, 2000, Resolution No. 184(00), adding (tribal members) mandatory use of community water and sewerage system, 91.203(1) and 91.302(1).

Prior Ordinances:

Ordinance adopted January 21, 1963, returned by BIA and thereafter rescinded by motion February 11, 1963.

Temporary ordinance adopted June 10, 1963, Resolution No. 51(63).

Temporary ordinance adopted August 21, 1978, Resolution No. 166(78).

TRIBAL CODE

CHAPTER 91

AN ORDINANCE TO ESTABLISH THE LAC DU FLAMBEAU
WATER AND SEWER AUTHORITY

CHAPTER I: ESTABLISHMENT OF WATER AND SEWER AUTHORITY

91.101 Establishment of Water and Sewer Authority.

Pursuant to the authority vested in the Tribe by its constitution, and particularly by Article VI, Section (a), (c), and (o) thereof, and its authority to provide for the health, safety, morals, and welfare of the Tribe, the Tribal Council hereby charters a public corporation known as the Lac du Flambeau Water and Sewer Authority (hereinafter referred to as the Authority), and enacts this ordinance which shall constitute the charter of the Authority.

91.102 Purposes.

The authority shall be organized and operated for the following purposes:

- (1) To provide for sanitary community water supply and sewerage systems.
- (2) To assume control of and responsibility for the operation, repair and maintenance of the water and sewer facilities and equipment so as to keep said facilities in good operating condition, in accordance with accepted standards and practices within the State of Wisconsin.
- (3) To establish service charges sufficient to sustain the proper operation, maintenance and repair of the system, and to provide for depreciation, and contingencies; and to collect such service charges for individuals, business concerns and establishments, and any other entities served by the system.

91.103 Definitions.

- (1) "Tribe or Band" means the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin.
- (2) "Council" means the governing body of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin.

(3) “Authority” means the Lac du Flambeau Band Water and Sewer Authority.

(4) “Community Water System” means the water supply system serving the Lac du Flambeau community.

(5) “Community Sewerage System” means the sewerage system operated by the Water and Sewer Department for the collection and disposal of liquid and water carrying domestic and industrial waste.

(6) “Plumbing Fixtures” means the receptacles, devices or appliances supplied with water or which received or liquids or liquid borne wastes, all necessary connecting pipes, fittings, control valves and appurtenances is or adjacent to the building.

(7) “Individual Sewage Disposal System” means a sewage disposal system other than the community sewerage system for the collection and disposal of human excreta, or liquid or water- carried wastes, or both from one or more premises and includes privies, septic tanks, soil-absorption systems, chemical type toilets and similar facilities, together with all necessary connecting pipes, fittings, control valves and appurtenances.

(8) “Domestic Well” means a well which serves or is intended to serve as a source of water supply for domestic use or drinking water.

(9) “Persons” means an individual, firm, partnership, association, organization, corporation, or other legal entity.

91.104 Organization and Bylaws.

(1) The affairs of the Authority shall be managed by a Board of Commissioners composed of five persons.

(a) The Board members shall be appointed, and may be reappointed, by the Council. A certificate of the Secretary of the Council as to the appointment or reappointment and the term of office of any commissioner shall be conclusive evidence of the due and proper appointment of a Commissioner.

(b) The term of office shall be four years and staggered. When the Board is first established, one member’s term shall be designated to expire in one year, another to expire in two years, a third to expire in three years, and the last two in four years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed.

(c) The Board shall elect from among its members a Chairman, Vice-Chairman, a Secretary, and a Treasurer; and any member may hold two of these positions. In the absence of the Chairman, the Vice-Chairman shall preside; and in the absence of both the Chairman and Vice-Chairman the Secretary shall preside.

(d) The Council may remove any member of the Board by approval and/or recommendation of the Water and Sewer Board of Commissioners.

(e) The Commissioners shall receive compensation for their services in the sum of \$25.00 per meeting, and receive payment for accrued expenses according to Tribal Policy.

(f) Three members of the Board shall constitute a quorum for the transaction of business, notwithstanding the existence of any vacancies.

(g) The Secretary shall keep complete and accurate records of all meetings and actions taken by the Board.

(h) The Treasurer shall have access to complete and accurate financial records as kept by the Accounting Department, and shall be responsible to make monthly financial reports to the Board and such other financial reports as the Board may consider necessary. The Treasurer shall submit a complete annual report, in written form, as received from the Accounting Department to the Tribal Council within 45 days of the close of the fiscal/calendar year. The Treasurer shall be bonded in such amount as is prescribed by the Council or by an agreement to which the Authority is a party.

(2) The Board shall have authority to exercise, by majority vote of those present and voting, any and all powers delegated to the Authority by this ordinance or any amendments thereto.

(3) Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon 24 hours actual notice and business transacted, provided that three or more members concur in the proposed action.

91.105 Powers.

(1) The Authority shall have perpetual succession in its corporate name.

(2) The Authority shall have the following powers which it may exercise consistent with purposes for which it is established:

(a) The Council hereby gives it irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities under this ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for debts or obligations of the Authority, except insofar as expressly authorized by this ordinance.

(b) To adopt and use a corporate seal.

(c) To enter into any one agreement, contract, or understanding with any government agency, federal, state or local (including the Council), or with any person, partnership or corporation providing that any contract involving payment of money by the Authority in excess of \$10,000.00 in any one fiscal year shall be subject to the approval of the Tribal Council.

(d) To borrow money, to issue evidence of indebtedness and to repay the same; provided, no money may be borrowed from any persons, partnership, corporation, institution, firm, governmental body, or entity of any kind except the United States of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin without the approval of the Tribal Council.

(e) To purchase insurance for any property or against any risk or hazard.

(f) To establish and maintain such bank accounts as may be necessary and convenient provided such accounts shall be fully covered by F.D.I.C.

(g) To establish water and sewer service charges. The temporary water and sewer services charges and the billing procedures established by Resolution No. 166(78) of August 21, 1978, shall be adhered to by the Authority, until such time as they may change such changes or procedures by official action in accordance with the bylaws of the Authority.

(h) To issue bills and collect payment for sewer and water services from each individual, concern, or establishment served by Community Water and Sewerage System, and to maintain records of the income, disbursements, and expenses of the operation of the systems.

(i) To employ personnel in conjunction with existing Tribal Personnel Policies to operate the water and sewer facilities, to establish the

duties and compensation of employees, and to pay this compensation as an operating expense of the Community Water and Sewerage System.

(j) To disburse monies in payment of existing and future operation and maintenance expenses of the Community Water and Sewerage System including repayment to the Tribe of monies which the Tribe borrowed to the water and sewer to defray such expenses.

(k) To prepare public notice of charge for water and sewer service to set date for such charges to begin, and to send this notice to each individual, concern, or establishment served by the Community Water and Sewer Systems.

(l) To initiate purchase and pay for all the water meters necessary to make water connections to all persons, business and non-Indian residences using water, and to provide for a “connection charge” fee to be uniformly established by the Board according to the size of each meter being installed and to bill and collect this “connection charge” fee from each individual, concern, or establishment served by the Community Water System Facilities.

(m) To take further actions, including adoption of bylaws, as are commonly engaged in by bodies of this charter as the Board may deem necessary desirable to effectuate the purpose of the Authority.

(n) To establish quarterly and/or monthly minimum water and sewer service charges to be paid by each customer, according to the size of the water meter used.

(o) To establish a security deposit amount according to meter size and to be refunded to the customer upon termination of service provided all payments for services are current and/or meter is not damaged.

CHAPTER II: TRIBAL MEMBER WATER USE AND WATER SERVICE CHARGE

91.201 Definitions.

(1) Approving Authority. Shall mean the Tribal Council or its duly-authorized agent or representative.

(2) Curb Box. Shall mean an extension of pipe placed on top of the Curb Stop that provides a means to operate the Curb Stop, and shall be placed at the property line with the curb stop. It shall be controlled by the Authority and damage to it shall be repaired at the property owners expense.

(3) Curb Stop. Shall mean a shut off valve placed at the property line of each customer of the Authority that controls the flow of potable water and is able to be turned on and off and is required of all users of the water system.

(4) Debt Service. Shall mean the cost to the Authority for the retirement of debts incurred in the provision of the water system including both principal and interest.

(5) Easements. Shall mean an acquired legal right for the specified use of land owned by others.

(6) Emergency. Shall mean a detriment to health, safety and welfare of the Public.

(7) Fire Hydrant. Shall mean a device connected to the public water supply system and is used to protect life and property from fires. They shall be owned by the Commission and access to their use shall be governed by the Commission for uses other than fire protection. Damaged caused to fire hydrants shall be repaired and the person or persons causing such damage shall be responsible to reimburse the Tribe for such damage.

(8) Gross Misconduct. Inappropriate disclosure of confidential information, misuse of Authority funds and/or information; and or attending meetings under the influence of alcohol, non-prescription drugs and/or illegally obtained prescription drugs.

(9) Ground Water. Shall mean sub-surface water occupying the zone of saturation, from which wells and springs are fed. In a strict sense, the term applies to water below the water table.

(10) May is permissive. Shall is mandatory.

(11) Operation and Maintenance Cost. Shall mean the actual sums spent by the Authority in the operation and maintenance of its sewer system consisting of, but not limited to each and all of the following purposes:

(a) Wages and salaries and employees related expenses of operating, maintenance, clerical, laboratory and supervisory personnel, together with fringe benefits and premiums paid on such wages and salaries for the State of Wisconsin workmen's compensation coverage.

(b) Electrical Power.

(c) Chemicals, fuel and other operating supplies.

(d) Repairs to and maintenance of the equipment associated therewith.

(e) Replacement costs of equipment.

(f) Premiums for insurance providing coverage against liability for the injury to persons and/or property.

(g) Premiums for hazard insurance.

(h) Rents and leasing costs.

(i) Operating, licensing and maintenance costs for trucks and heavy equipment.

(j) Consultant and legal fees.

(12) Person. Shall mean any and all persons, including and individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency, or other entity.

(13) Principal Residence. Shall mean any single family dwelling building used for human habitation.

(14) Replacement Costs. Shall mean expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary to maintain the capacity and performance during the service life of the treatment works for which such works were designed and constructed.

(15) Shall is mandatory. May is permissive.

(16) Singular and Plural. When permitted by the context, use of the singular shall be construed to include the plural and of the plural to include the singular.

(17) Standard Methods. Shall mean the examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water and Wastewater" published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(18) State Plumbing Codes. Means the State of Wisconsin Administrative Code, ILHR-82, "Design, Construction, Installation, Supervision and Inspecting of Plumbing."

(19) Water Meter. Shall mean a device used to measure water that is billed to consumers and its owned and maintained by the Authority.

(20) Water Service. Shall mean the length of water service pipe from the property line to a location inside the home, business, and or industry ending at a point where a connection is available for a water meter.

91.202 Authority Charges And Fees.

(1) Charges and Fees - Permit fees, connection charges service charges, and other fees shall be set by the Authority in such amounts as the Authority shall fix by resolution from time to time in a manner consistent with all Federal and Tribal statutes and regulations.

(2) Delinquent Payments and Billings - Billings and delinquency charges shall be administered pursuant to procedures adopted by the Tribal Council.

(3) Contested and/or Appealed Billings and Delinquent Payments - Contested and/or appealed billings and payments shall be dealt with pursuant to appropriate procedures adopted by the Lac du Flambeau Tribe which shall be available to all customers of the Authority.

(4) User Rates for Water Utility.

(a) Water rates for all water system users shall consist of two components; a fixed charge and a variable rate. All system users shall be charges at least on a quarterly basis.

(b) The fixed charge, or demand charge, shall be at least sufficient to pay the user's proportionate share of the annual cost of the fixed costs of the water system. These costs include: maintenance, billing and meter reading labor costs, repairs and maintenance costs, and the cost of testing and supplies. The fixed charge for residential users shall be determined by dividing the annual fixed costs by the number of equivalents by size of meter.

(c) The fixed charge for meters other than 5/8 inch or 3/4 inch shall be proportional to the residential fixed charge by the number of equivalents by size of meter.

(d) The equivalents by size of meter shall be the equivalents used by the Public Service Commission.

(e) The variable rate shall be at least sufficient to pay the user's proportionate share of the annual cost of the variable costs of the water system. The variable costs include: equipment and chemical costs, electrical

costs, and depreciation. The variable rate shall be charged based on metered usage at a unit price per volume used. The variable rate shall be determined by dividing the annual variable costs by the total annual water sales in 1,000 gallons.

91.203 Water Construction and Connections.

(1) **Mandatory Use of Community Water System.** It shall be unlawful for any person to construct, maintain or utilize a source of water supply other than the community system for drinking and sanitation purposes upon any premises located within 200 feet of lines of the Lac du Flambeau Community water system.

(2) **Work Authorized.** No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb the water main or appurtenances thereof without first obtaining a written permit from the Approving Authority.

(3) **Cost of Water Connection.** All costs and expenses incident to the installation and connection of the building sewer shall be borne by the person making the connection.

(4) **Materials & Methods of Construction.** The size, alignment, materials of construction of a water service and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the Tribe's building and plumbing code or other applicable rules and regulations of the Tribe. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM.

(5) **Conformance to Plumbing Codes.** The connection of the water service into the water main shall conform to the requirements of the building and plumbing code, or other applicable rules and regulations of the Tribe or the procedures set forth in appropriate specifications of the ASTM. All such connections shall be made and water tight. Any deviation from the prescribed procedures and materials must be approved by the Approving Authority before installation.

(6) **Connection Inspection.** The person making a connection to a public water main shall notify the Approving Authority when the water service is ready for inspection and connection to the water main. The connection shall be inspected and approved by the Approving Authority.

(7) **Barricades; Restoration.** All excavations for the building water service shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the

course of the work shall be restored in a manner satisfactory to the Approving Authority.

91.204 Billing Practice.

(1) Calculation of User Charges. User charges shall be computed according to the rates and formula presented in this Ordinance.

(2) User Charge Billing Period. User charges shall be billed by the Authority to the water users on a quarterly basis.

(3) Payment of Water Service Charges. Those persons billed by the Authority for the water service charges shall pay such charges within thirty (30) days after the billing date.

(4) Penalties. Such water service charges levied by the Authority against the water users in accordance with this Ordinance shall be a debt due to the Authority and shall be a lien upon the property. If this debt is not paid within (30) days after it is due, it may be deemed delinquent and may be placed, together with such penalties as provided by statute, in the next year's tax roll and be collected as other taxes are collected.

91.205 Right of Entry, Safety & Identification.

(1) Right of entry. The Approving Authority or other duly authorized employees of the Tribe, bearing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection, observation, or testing, all in accordance with the provisions of this Ordinance.

(2) Safety. While performing the necessary work on private premises referred to in Section 91.501, the duly authorized Tribal employees shall observe all safety rules applicable to the premises established by the owner or the occupant.

(3) Identification - Right To Enter Easements. The Approving Authority or duly authorized employees of the Tribe, bearing proper credentials and identification, shall be permitted to enter all private properties through with the Tribe hold an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within said easement, all subject to the terms, if any, of such easement.

91.206 Violations & Penalties.

(1) Public Nuisance. The violation of any provisions of Chapter II, Section 91.201, 91.202, 91.203, or 91.204, inclusive, hereof, shall constitute a public nuisance as that term is defined in the Tribal Code.

(2) Abatement or Nuisance - No Immediate Danger. If it is determined that a public nuisance has been created, or is being maintained, by a violation of this Ordinance (as set forth hereinabove), but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, written notice shall be served on the person causing or maintaining the nuisance to remove or correct the same (identifying the nature of the violation) within a specified reasonable time. The offender shall, within the period of time stated in said notice, abate the nuisance and permanently cease all violations.

(3) Abatement of Nuisance - Immediate Danger. If it is determined that a public nuisance cause by the violation of this Ordinance exists, and that there is great and immediate danger to public health, safety, peace, morals or decency, the Tribal Council, Water and Sewer Department Manager and/or the Chief of Police may cause the same to immediately be abated, and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be. If notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

(4) Accidental Discharge. Any person found to be responsible for an action which causes damage to the water production, treatment storage or distribution facilities shall, in addition to being fined, pay an amount to cover any damages, both values to be established by the Approving Authority.

(5) Penalty For Violation. Any person who violates any provisions of this Ordinance shall be subject to a penalty as provided in Tribal Code which chapter is, by this reference, made a part hereof as if fully set forth herein.

(6) Liability To Tribe For Losses. Any person violating any provisions of this Ordinance shall, in addition to any penalty or fine which may be assessed against him, become liable to the Municipality for any expense, loss or damage occasioned by reason of such violation which the Municipality may suffer as a result thereof.

91.207 Appeals.

(1) Procedures. Any user, permit application or permit holder affected by a decision, action or determination, including cease and desist orders, made by the Approving Authority interpreting or implementing the provisions of this Ordinance or in any permit issued herein, may file with Approving Authority a written request for reconsideration within ten (10) days of the date of such decision, action or determination, setting forth in detail the facts supporting the user's request for reconsideration. The Approving Authority shall render a decision on the request for reconsideration to the user, permit applicant, permit holder in writing fifteen (15) days of receipt of request. If the ruling on the request for reconsideration made by the Approving Authority is unsatisfactory, the person requesting reconsideration may,

within the (10) days after notification of the action, file a written appeal with Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians. The written appeal shall be heard by the Tribal Council within thirty (30) days from the date of filing. The Tribal Council shall make a final ruling on the appeal within ten (10) days from the date of hearing.

91.208 Validity.

(1) **Superseding Previous Ordinances.** This Ordinance governing water use, water service charges and water connections and construction shall supersede all previous ordinances of the Tribe.

(2) **Invalidation Clause.** Invalidity of any section, clause, sentence or provision in the Ordinance shall not affect the validity of any other section, clause, sentence or provision of this Ordinance which can be given effect without such invalid part or parts.

(3) **Amendment.** The Tribe, through its duly authorized officers, reserves the right to amend this Ordinance in part or in whole whenever it may deem necessary.

91.209 Audit Notification & Records.

(1) **Biennial Audit.** The Municipality shall review, at least every two (2) years, the water consumption of its water users, the operation, maintenance and replacement expenses of the water treatment facilities, and the water service charge system. Based upon this review, the Municipality shall revise the water service charge system, if necessary, to accomplish the following:

(a) Maintain a proportionate distribution of operation and maintenance expenses among water users based upon the water volume.

(b) Generate sufficient revenue to pay the debt service costs and the total operation and maintenance costs necessary to provide for the proper operation and maintenance (including replacement) of the water system.

(2) **Annual Notification.** The Tribe shall notify its water users annually about the water service charge rates. The notification shall show what portion of the rates are attributable to the operation and maintenance expenses, and debt service costs of the water facilities. The notification shall occur in conjunction with a regular bill.

(3) **Records.** The Tribe shall maintain records regarding water flow, costs of the water facilities, sampling programs and other information.

91.210 Effective Date.

This Ordinance shall take effect immediately as provided in Article VI, Section 1 of the Tribal Constitution.

CHAPTER III SEWER USE AND SEWER CHARGE ORDINANCE

91.301 Definitions.

(1) Approving Authority. Shall mean the Tribal Council or its duly-authorized agent or representative.

(2) BOD (denoting Biochemical Oxygen Demand). Shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter in five (5) days at 20°C, expressed as milligrams per liter (mg/l). Quantative determination of BOD shall be made in accordance with procedures set forth in "Standard Methods."

(3) Building Drain. Shall mean that part of the lowest horizontal piping of a drain system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer.

(4) Building Sewer. Shall mean a sanitary sewer which begins immediately outside of the foundation wall of any building or structure being served, and ends at its connection to the public sewer.

(5) Category A. Shall be those sanitary sewer users who discharge normal domestic strength wastewater with concentrations of BOD no greater than 235 mg/l, suspended solids no greater than 310 mg/l and phosphorous no greater than 8 mg/l.

(6) Category B. Shall be those sanitary sewer users who discharge wastewater with concentrations in excess of 235 mg/l of BOD, 310 mg/l suspended solids and 8 mg/l phosphorus. Users whose wastewater exceeds the concentration for any one of these parameters shall be in Category B.

(7) Chlorine Requirement. Shall mean the amount of chlorine, in mg/l, which must be added to sewage to produce a chlorine residual as specified in the National Pollutant Discharge Elimination System (NPDES) permit.

(8) Combined Sewer. Shall mean a sewer intended to receive both wastewater and storm or surface water.

(9) Compatible Pollutants. Shall mean BOD, suspended solids, phosphorous, ammonia, nitrogen, TKN, pH or fecal coliform bacteria, plus additional pollutants identified in the Tribe's NPDES permit for its wastewater treatment facili-

ty; provided that such facility is designed to treat such additional pollutants and, in fact, does remove such pollutants to a substantial degree.

(10) Easement. Shall mean an acquired legal right for the specified use of land owned by others.

(11) Floatable Oil. Is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

(12) Ground Garbage. Shall mean the residue from the preparation, cooling, dispensing, handling, storage and sale of food products and produce that has been shredded to such a degree that all particles will be carried freely in suspension under the flow conditions normally prevailing in public sewers with no particle greater than ½-inch in any dimension.

(13) IHS. Shall mean Indian Health Service.

(14) Incompatible Pollutants shall mean wastewater with pollutants that will adversely affect the wastewater treatment facilities or disrupt the quality of wastewater treatment if discharged to the wastewater treatment facilities.

(15) Industrial Waste. Shall mean any solid, liquid or gaseous substance discharged or escaping from any industrial, manufacturing or commercial establishment. Such term includes any wastewater which is not sanitary sewage.

(16) Natural Outlet. Shall mean any outlet, including storm sewers and combined sewer overflows, into a water course, pond, ditch, lake or other body of surface water or ground water.

(17) Nitrogen. Shall mean ammonia nitrogen, expressed in mg/l of NH_3N .

(18) Normal Domestic Strength Wastewater. Shall mean wastewater with concentrations of BOD no greater than 235 mg/l, suspended solids no greater than 310 mg/l and phosphorus no greater than 8 mg/l.

(19) Operation and Maintenance Costs. Shall include all costs associated with the operation and maintenance of the wastewater collection and treatment facilities, including administration and replacement costs, all as determined from time to time, by the Tribe.

(20) Person. Shall mean any and all persons, including any individual, firm, company, municipality or private corporation, association, society, institution, enterprise, governmental agency or other entity.

(21) "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion molar concentration. The molar concentration is the number of hydrogen ions, in moles per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .

(22) Phosphorus. Shall mean total phosphorus and is expressed in mg/l of P (phosphorus).

(23) Publicly Owned Treatment Works (POTW). A treatment works including any devices and systems used in the storage, treatment, recycling and reclamation of Tribal sewage and industrial waste. The systems include sewers, pipes and equipment used to convey wastewater to the treatment facility. The term also includes the Tribe that owns and operates the facilities.

(24) Public Sewer. Shall mean any publicly owned sewer, storm drain, sanitary sewer or combined sewer.

(25) Replacement Costs. Shall mean expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the wastewater treatment facility to maintain the capacity and performance for which such facilities were designed and constructed.

(26) Sanitary Sewage. Shall mean combination of liquid and water carried wastes discharged from toilets and/or sanitary plumbing facilities.

(27) Sanitary Sewer. Shall mean a sewer that carries sewage or wastewater.

(28) Sewage. Is the spent water of a person or community. The preferred term is "wastewater".

(29) Sewer. Shall mean a pipe or conduit that carries wastewater or drainage water.

(30) Sewer Service Charge. Is a charge levied on users of the wastewater collection and treatment facilities for payment of operation and maintenance expenses, debt service costs and other expenses or obligations of said facilities.

(31) Sewer Service Charge System. Shall have the same meaning as user charge system.

(32) Shall is mandatory; May is permissible.

(33) Slug. Shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period

of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration of flows during normal operation and/or adversely affects the collection system and/or performance of the wastewater treatment facility.

(34) Standard Methods. Shall mean the examination and analytical procedures set forth in the most recent edition of "Standard Methods for the Examination of Water and Wastewater" published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

(35) Storm Sewer Or Drain. Shall mean a drain or sewer for conveying water, ground water, subsurface water or unpolluted water from any source.

(36) Suspended Solids(SS). Expressed in mg/l shall mean total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as non-filterable residue.

(37) TKN (Total Kjeldahl Nitrogen) shall mean the sum of organic nitrogen and ammonia nitrogen.

(38) Tribe shall mean the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(39) Unpolluted Water. Is water quality equal to or better than the effluent of the wastewater treatment facilities or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities.

(40) Wastewater. Shall mean the spent water of a community or person. From the stand point of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any ground water, surface water and storm water that may be present.

(41) Wastewater Collection Facilities(or Wastewater Collection System) shall mean the structures and equipment required to collect and carry wastewater.

(42) Wastewater Treatment Facility. Shall mean an arrangement of devices and structures for treating wastewater and sludge. Also referred to as wastewater treatment plant.

(43) National Pollutant Discharge Elimination System (NPDES) Permit, is a document issued by the United States of America which establishes effluent limitations and monitoring requirements for the Tribal wastewater treatment facility.

91.302 Use of the Public Sewers.

(1) Mandatory Use of Community Sewerage System. It shall be unlawful for any person to dispose of domestic wastewater within 200 feet of the community sewerage system or to provide for the disposal of such wastes other than through the utilization of the Lac du Flambeau community sewerage system.

(2) Sanitary Sewers. No person(s) shall discharge or cause to be discharged any unpolluted waters such as storm water, ground water, roof run off, subsurface drainage, or cooling water to any sanitary sewer.

(3) Storm Sewers. Storm water and all other unpolluted water shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Approving Authority and other regulatory agencies. Unpolluted industrial cooling water or process water may be discharged, on approval of the Approving Authority and other regulatory agencies, to a storm sewer, combined sewer or natural outlet.

(4) Prohibitions and Limitations. Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(a) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(b) Any waters or wastes containing toxic or poisonous solids, liquid or gases in sufficient quantity, either singly or by interaction with other wastes, that could injure or interfere with any waste treatment or sludge disposal process, constitute a hazard to humans or animals, or create a public nuisance in the receiving waters of the wastewater treatment facility.

(c) Any waters or wastes having a pH lower than 5.0, or in excess of 9.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater treatment facilities.

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in public sewers or other interference with the proper operation of the wastewater treatment facilities, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, underground garbage, whole blood,

paunch manure, hair and fleshing, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(e) The following described substances, materials, waters, or waste shall be limited in discharges to sanitary sewer systems to concentrations or quantities which will not harm either the sanitary sewers, wastewater treatment process or equipment; will not have an adverse effect on the receiving stream; or will not otherwise endanger lives, limbs, public property, or constitute a nuisance. The Approving Authority may set limitations more stringent than those established below if such more stringent limitations are necessary to meet the above objectives. The Approving Authority will give consideration to the quantity of subject waste in relation to flows and velocities in the sewers, materials or construction of the sanitary sewers, the wastewater treatment facility, and other pertinent factors. Wastes or wastewater discharged to the sanitary sewers shall not exceed the following limitations:

(1) Wastewater having a temperature higher than 150°F (65°C).

(2) Wastewater containing more than 25 mg/l of petroleum oil, non-biodegradable cutting oils or products of mineral oil origin.

(3) Wastewater from industrial plants containing floatable oils, fat or grease.

(4) Any un-ground garbage. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

(5) Any waters or wastes containing iron, chromium, copper, zinc and other toxic and nonconventional pollutants to such degree that the concentration exceeds levels specified by federal, state and local authorities.

(6) Any waters or wastes containing odor producing substances exceeding limits which may be established by the Approving Authority or limits established by any federal rule or regulation.

(7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Approving Authority in compliance with applicable state or federal regulations.

(8) Any waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment facility effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(9) Any water or wastes which, by interaction with other water or wastes in the sanitary sewer system, release obnoxious gases, form suspended solids or create a condition deleterious to structures and treatment processes.

(10) Materials which exert or cause:

- (a) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment facility.
- (b) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.
- (c) Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium sulfate).
- (d) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(11) Incompatible pollutants in excess of the allowed limits as determined by local and federal laws and regulations by the Environmental Protection Agency (EPA), 40 CFR 403, as amended from time to time.

(5) NPDES Permit. No person shall cause or permit a discharge into the sanitary sewers that would cause a violation of the Tribe's NPDES permit and any modifications thereof.

(6) Special Arrangements. No statement contained in this Ordinance shall be construed as prohibiting any special agreement between the Approval Authority and any person whereby a waste of unusual strength or character may be admitted to the wastewater treatment facilities, either before or after pretreatment, provided that there is no impairment of the functioning of the wastewater treatment facilities by reason of the admission of such wastes, and no extra costs are incurred by the Tribe without recompense by the person; and further provided that all rates and provisions set forth in this Ordinance are recognized and adhered to.

(7) New Connections. New connections to the Tribes sanitary sewer system will be allowed only if there is available capacity in all of the downstream wastewater treatment facilities.

91.303 Control of Industrial Wastes Directed to Public Sewers.

(1) Submission of Basic Data. The Approving Authority may require each person who discharges or seeks to discharge industrial wastes to a public sewer to prepare and file with the Approving Authority, at such times as it determines, a report that shall include pertinent data relating to the quantity and characteristics of the wastes discharged to the wastewater treatment facilities. In the case of a new connection, the Approving Authority may require that this report be prepared prior to making the connection to the public sewers.

(2) Industrial Discharges. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters or wastes contain substances or possess the characteristics enumerated in Section 91.302, and which in the judgment of the Approving Authority have a deleterious effect upon the wastewater treatment facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life, health or constitute a public nuisance, the Approving Authority may:

(a) Reject the wastes.

(b) Require pretreatment to an acceptable condition for discharge to the public sewers.

(c) Require control over the quantities and rates of discharge, and/or

(d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of this Ordinance.

(3) Dilution Prohibition. No industrial user shall increase the use of process water or dilute a discharge as a substitute for adequate treatment to achieve compliance with any Pretreatment Standard or Requirement.

(4) Spill Prevention and Slug Control Plans.

(a) (1) Industrial users shall provide protection from accidental discharge of materials which may interfere with the POTW by developing spill prevention plans. Facilities necessary to implement these plans shall be provided and maintained at the owner's or industrial user's expense. Spill prevention plans, including the facilities and the operating procedures shall be approved by the POTW before construction of the facility.

(2) Industrial users that store hazardous substances shall not contribute to the POTW after the effective date of this ordinance unless a spill prevention plan has been approved by the POTW. Approval of such plans shall not relieve the industrial user from complying with all other laws and regulations governing the use, storage, and transportation of hazardous substances.

(b) The POTW shall evaluate each significant industrial user at least once every two years, and other industrial users as necessary, to determine whether such user needs a plan to control slug discharges. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(1) Description of discharge practices, including non routine batch discharges;

(2) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under Section 91.302(3), with procedures for follow-up written notification within five days;

(3) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response;

(5) Notification.

(a) (1) In the case of any discharge in violation of this ordinance or permit conditions, and in the case of any discharge that could cause problems to the POTW, including any slug loadings, as defined by Section 91.301(33) of this ordinance, the industrial user shall immediately notify the Water and Sewer Department, Tribal Natural Resource Department or the Tribal Sanitarian of the discharge by telephone. The notification shall include:

- discharge
- (a) the date, time, location and duration of the discharge
 - (b) the type of waste including concentration and volume; and
 - (c) any corrective actions taken by the user

(2) Within five days following such a discharge the user shall submit a written report describing the cause of the discharge and the measures that will be taken by the user to prevent similar future discharges.

(3) Such notification shall not relieve the user of any expense, loss, damage, or other liability resulting from the discharge, nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed under this ordinance or other applicable State or federal law.

(b) Notification of changed discharge. All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

(6) Employee Training. The industrial user shall permanently post a notice in a prominent place advising all employees to call the Water and Sewer Department, Tribal Natural Resources Department, or the Tribal Sanitarian in the event of a dangerous discharge for which notification is required. Employers shall advise all employees who may cause or be injured by such a discharge of the emergency notification procedure.

(7) Records.

(a) Users shall retain and make available upon request of authorized representatives of the IHS or the EPA all records required to be collected by the

user pursuant to this ordinance or any permit or order issued pursuant to this ordinance.

(b) These records shall remain available for a period of at least three (3) years after their collection.

(c) This period shall be extended during any litigation concerning compliance with this ordinance or permit conditions.

(8) Analytical Requirements. All analyses, including sampling results submitted in support of any application reports, evidence or required by any permit or order shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto or, if 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, in accordance with procedures approved by the EPA.

(9) Confidential Information.

(a) Information and data (other than effluent data) about a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data. When such a confidentiality claim is asserted, the information shall be treated as such until a determination is made by the POTW. Effluent data shall be available to the public without restriction.

(b) When the person furnishing a report satisfies the POTW that such person has made the demonstration required by (a), the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection except by the Tribe or EPA for uses related to this ordinance, the NPDES permit or the pretreatment program. Confidential portions of a report shall be available for use by the State or EPA in judicial review or enforcement proceedings involving the person furnishing the report. Effluent data will not be recognized as confidential information.

(10) Right Of Entry. Representatives of the POTW and EPA, upon showing proper identification shall have the right to enter and inspect the premises of any user who may be subject to the requirements of this ordinance. Industrial Users shall allow authorized representatives of the POTW and EPA access to all premises for the purpose of inspecting, sampling, examining records or copying records in the performance of their duties. Authorized representatives of the POTW and EPA shall have the right to place on the user's property such devices as are

necessary to conduct sampling and monitoring. Where a user has security or safety measures in force which would require clearance, training, or wearing of special protective gear, the user shall make necessary arrangements at its own expense, to enable authorized representatives of the POTW and EPA to enter and inspect the premises as guaranteed by this paragraph.

(11) Control Manholes. Each person discharging industrial wastes into a public sewer shall, at the discretion of the Approving Authority, construct and maintain one or more control manholes or access points to facilitate observation, measurement and sampling of wastes, including sanitary sewage. Control manholes or access facilities shall be located and built in a manner acceptable to the Approving Authority. If measuring and/or sampling devices are to be permanently installed, they shall meet the following minimum guidelines:

(a) A minimum 6' diameter manhole with steps and a bench for setting of equipment shall be installed. These manholes shall have a minimum 24" diameter opening with cast iron manhole cover or lockable lid. These sampling manholes shall be located at least 15 feet downstream of any bends, junctions or manholes. Maximum slope of upstream pipe shall be 2%.

(b) All manholes shall be installed with flow measuring devices such as a Parshall flume, Palmer Bowls flume, subsonic flume, or other suitable device as approved by the Approving Authority. An integral staff gauge shall be provided with each unit with measurements in hundredths of a foot. Flume size and type depends on flow rates anticipated and accuracy desired.

(c) A flow metering device shall be provided. The metering device shall be a bubbler, ultrasonic or subsonic device. Flow shall be indicated, totalized, and recorded. A 4-20 ma signal or pulse proportional to flow shall be outputted to a sampler for flow proportional sampling.

(d) A refrigerated flow proportional sampler shall be furnished, suitable for composite or hourly sampling (24 intervals).

(e) Plans for the aforementioned facilities shall be prepared by a licensed professional engineer.

(f) Plans, specification and hydraulic calculations shall be submitted to the Approving Authority.

Control manholes, access facilities and related equipment shall be installed by the person discharging the waste, at his expense, and shall be maintained by him so as to be in safe condition, accessible and in proper operating condition at all times.

(12) Measurement of Flow. The volume of flow used for computing sewer service charges shall be the metered water consumption of the person as shown in the records of meter readings maintained by the Water and Sewer Department except as noted in Sub-section (13).

(13) Metering of Waste. Devices for measuring the volume of waste discharged may be required by the Approving Authority if this volume cannot otherwise be determined from the metered water consumption records. Metering devices for determining the volume of waste shall be installed, owned and maintained by the person discharging the wastewater. Following approval and installation, such meters may not be removed without the consent of the Approving Authority.

(14) Waste Sampling. Industrial wastes discharged into the public sewers shall be subject to periodic inspection and a determination of character and concentration of said wastes.

The determination shall be made by the industry as often as may be deemed necessary by the Approving Authority.

Samples shall be collected in such a manner as to be representative of the composition of the wastes. The sampling may be accomplished either manually or by the use of mechanical equipment acceptable to the Approving Authority.

Installation, operation and maintenance of the sampling facilities shall be the responsibility of the person discharging the waste and shall be subject to the approval of the Approving Authority. Access to sampling locations shall be granted to the Approving Authority or its duly authorized representatives at all times. Every care shall be exercised in the collection of samples to ensure their preservation in a state comparable to that at the time the sample was taken.

(15) Pretreatment. Persons discharging industrial wastes into any public sewer may be required to pretreat such wastes, if the Approving Authority determines pretreatment is necessary to protect the wastewater treatment facilities or prevent the discharge of incompatible pollutants.

In that event, such persons shall provide at his expense such pretreatment or processing facilities as may be determined necessary to render wastes acceptable to admission to the sanitary sewers.

(16) Grease, Oil & Sand Interceptors. Grease, oil and sand interceptors shall be provided when, in the opinion of the Approving Authority, they are necessary for the proper handling of liquid wastes containing floatable grease in amounts in excess of those specified in this Ordinance, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required

for private living quarters or dwelling units. All interceptors shall be of the type and capacity approved by the Approving Authority, and shall be located as to be readily and easily accessible for cleaning and inspection. In maintaining these interceptors, the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Approving Authority. Disposal of the collected materials performed by owner's(s') personnel or currently licensed waste disposal firms must be in accordance with currently acceptable Federal and Tribal rules and regulations.

(17) Analyses. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this Ordinance shall be determined in accordance with the latest edition of "Standard Methods" and with the Federal Regulations of 40 CFR 136, "Guidelines Establishing Test Procedures for Analysis of Pollutants", as amended from time to time. Sampling methods, location, time, durations and frequencies are to be determined on an individual basis subject to approval of the Approving Authority.

Determination of the character and concentration of the industrial wastes shall be made by the person discharging them, or the person's agent, as designated and required by the Approving Authority at the cost of the discharger. The Approving Authority may also make its own analyses on the wastes, and these determinations shall be binding as a basis for sewer service charges.

18. Submission of Information. Plans, specifications and any other pertinent information relating to proposed flow equalization, pretreatment or grease and/or sand interceptor facilities shall be submitted for review and approval of the Approving Authority prior to the start of their construction if the effluent from such facilities is to be discharged into the public sewers. No construction of such facilities shall commence until said approval has been granted.

91.304 Basis For Sewer Service Charges.

(1) Sewer Users Served by Water Utility Water Meters. There is hereby levied and assessed upon each lot, parcel of land, building or premises having a connection with the wastewater collection system and being served with water solely by the Water and Sewer Department, a sewer service charged based, in part, on the quantity of water used, as measured by the Water and Sewer Department water meter used upon the premises.

(2) Sewer Users Served by Private Wells. If any person discharging wastewater into the public sanitary sewers procures any part or all of his water from sources other than the Water and Sewer Department, all or part of which is discharged into the sanitary sewer, the person shall have water meters installed by the Water and Sewer Department at the person's expense for the purpose of determining

the volume of water obtained from these sources. Where sewer meters are already installed, new water meters will not be required. The water meters shall be furnished by the Water and Sewer Department and installed under its supervision, all costs being at the expense of the person requiring the meter.

The Water and Sewer Department will charge for each meter a rental charge set by the Water and Sewer Department to compensate for the cost of furnishing and servicing the meter. The rental charge shall be billed at the time the sewer service charge is billed.

91.305 Amount of Sewer Service Charges.

(1) Reassignment of Sewer Users. The Approving Authority will reassign sewer users into appropriate sewer service charge categories if wastewater sampling programs or other related information indicate a change of categories is necessary.

(2) Operation, Maintenance & Replacement Fund Accounts. All sewer service charge revenues collected for replacement costs shall be deposited in a separate and distinct fund to be used solely for replacement costs as defined in Section 91.301. All sewer service charge revenues collected for other operation and maintenance expenses shall also be deposited in a separate and distinct fund.

All revenues for the replacement fund and for operation and maintenance of the wastewater treatment facilities shall be used solely for the replacement fund and operation and maintenance of the wastewater facilities.

(3) Disposal of Septic Tank Sludge & Holding Tank Sewage. No person in the business of gathering and disposing of septic tank sludge or holding tank sewage shall transfer such material into any disposal area or public sewage.

(4) Charge for Toxic Pollutants. Any person discharging toxic pollutants which cause an increase in the cost of managing the effluent or sludge from the municipality's wastewater treatment facility shall pay for such increased costs, as may be determined by the Approving Authority.

(5) Fees for Industrial Monitoring. The POTW may adopt charges and fees which may include:

(a) Fees for reimbursement of costs of setting up and operating the POTW Pretreatment Program;

(b) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by the Industrial User;

(c) Fees for reviewing accidental discharge procedures and construction;

(d) Fees for permit applications including the cost of processing such applications;

(e) Fees for filing appeals;

(f) Other fees as the POTW may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees chargeable by the POTW.

91.306 Billing Practice.

(1) Calculation of User Charges. User charges shall be computed according to the rates and formula presented in this Ordinance.

(2) User Charge Billing Period. User charges shall be billed by the Tribe to the sewer users on a quarterly basis.

(3) Payment of Sewer Service Charges. Those persons billed by the Tribe for the sewer service charges shall pay such charges within thirty (30) days after the billing date.

(4) Penalties. Such sewer service charges levied by the Tribe against the sewer users in accordance with this Ordinance shall be a debt due to the Tribe and shall be a lien upon the property. If this debt is not paid within thirty (30) days after it is due, it may be deemed delinquent and may be placed, together with such penalties as provided by statute, in the next year's tax roll and be collected as other taxes are collected.

Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties.

91.307 Right of Entry, Safety & Identification.

(1) Right of Entry. The Approving Authority or other duly authorized employees of the Tribe, bearing proper credentials and identification, shall be permitted to enter all properties for the purpose of inspection, observation, or testing, all in accordance with the provisions of this Ordinance.

(2) Safety. While performing the necessary work on private premises referred to in Section 91.301(1), the duly authorized Tribal employees shall observe all safety rules applicable to the premises established by the owner or the occupant.

(3) Identification - Right of Enter Easements. The Approving Authority or duly authorized employees of the Tribal, bearing proper credentials and identification, shall be permitted to enter all private properties through which the Tribe holds an easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within said easement, all subject to the terms, if any, of such easement.

91.308 Sewer Construction & Connections.

(1) Work Authorized. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb the sanitary sewer or appurtenances thereof without first obtaining a written permit from the Approving Authority.

(2) Cost of Sewer Connection. All costs and expenses incident to the installation and connection of the building sewer shall be borne by the person making the connection.

(3) Use of Old Building Sewers. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Approving Authority, to meet all requirements for this Ordinance.

(4) Materials and Methods of Construction. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench shall conform to the requirements of the Tribes building and plumbing code or other applicable rules and regulations of the Tribe. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply.

(5) Building Sewer Grade. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(6) Storm and Ground Water Drains. No person shall make connection of roof downspout, exterior foundation drains, area-way drains or other sources of surface runoff or ground water to a building sewer or building drain which is connected directly or indirectly to a sanitary sewer.

All existing downspout or ground water drains, etc., connected directly or indirectly to a sanitary sewer shall be disconnected within sixty (60) days of the date of an official written notice from the Approving Authority.

(7) Conformance To Plumbing Codes. The connection of the building sewer into the sanitary sewer shall conform to the requirements of the building and plumbing code, or other applicable rules and regulations of the Tribe or the procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9. All such connections shall be made gas tight and water tight. Any deviation from the prescribed procedures and materials must be approved by the Approving Authority before installation.

(8) Connection Inspection. The person making a connection to a public sewer shall notify the Approving Authority when the building sewer is ready for inspection and connection to the public sewer. The connection shall be inspected and approved by the Approving Authority.

(9) Barricades; Restoration. All excavations for the building sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Approving Authority.

91.309 Violations & Penalties.

(1) Public Nuisance. The violation of any provision of Section 91.301, 91.302, 91.303, 91.304 or inclusive 91.305(4) or 91.307, hereof, shall constitute a public nuisance as that term is defined in the Tribal Code.

(2) Abatement of Nuisance - No Immediate Danger. If it is determined that a public nuisance has been created, or is being maintained, by a violation of this Ordinance (as set forth hereinabove), but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, written notice shall be served on the person causing or maintaining the nuisance to remove or correct the same (identifying the nature of the violation) within a specified reasonable time. The offender shall, within the period of time stated in said notice, abate the nuisance and permanently cease all violations.

(3) Abatement of Nuisance - Immediate Danger. If it is determined that a public nuisance caused by the violation of this Ordinance exists, and that there is great and immediate danger to public health, safety, peace, morals or decency, the Tribal Council, Water and Sewer Department Manager and/or the Chief of Police may cause the same to immediately be abated, and charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the nuisance, as the case may be. If notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

(4) Accidental Discharge. Any person found to be responsible for accidentally allowing a deleterious discharge into the sewer system which causes

damage to the wastewater treatment facility and/or receiving body of water shall, in addition to being fined, pay an amount to cover any damages, both values to be established by the Approving Authority.

(5) **Penalty For Violation.** Any person who violates any provisions of this Ordinance shall be subject to a penalty as provided in Tribal Code which chapter is, by this reference, made a part hereof as if fully set forth herein.

(6) **Liability To Tribe For Losses.** Any person violating any provisions of this Ordinance shall, in addition to any penalty or fine which may be assessed against him, become liable to the Tribe for any expense, loss or damage occasioned by reason of such violation which the Tribe may suffer as a result thereof.

(7) **Enforcement of Industrial Provisions.**

(a) **Notification of Violation.** Whenever the POTW finds that any industrial user has violated or is violating this Ordinance, or a wastewater permit or order issued hereunder, the Approving Authority or his agent may serve upon said user written notice of the violation. Within 10 days of the receipt date of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Approving Authority. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation.

(b) **Civil Penalties.**

(1) Any industrial user who has violated or continues to violate this Ordinance or any order or permit issued hereunder, shall be liable to the POTW for a civil penalty of not more than (maximum allowable under Federal law), plus actual damages incurred by the POTW per violation per day for as long as the violation continues. In addition to the above described penalty and damages, the POTW may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling, monitoring and analysis expenses.

(2) The Approving Authority shall petition the Court to impose, assess, and recover such sums. In determining amount of liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the user, and any other factor as justice requires.

91.310 Appeals.

(1) Procedures. Any user, permit application or permit holder affected by a decision, action or determination, including cease and desist orders, made by the Approving Authority interpreting or implementing the provisions of this Ordinance or in any permit issued herein, may file with the Approving Authority a written request for reconsideration within ten (10) days of the date of such decision, action or determination, setting forth in detail the facts supporting the user's request for reconsideration. The Approving Authority shall render a decision on the request for reconsideration to the user, permit applicant, or permit holder in writing within fifteen (15) days of receipt of request. If the ruling on the request for reconsideration made by the Approving Authority is unsatisfactory, the person requesting reconsideration may, within ten (10) days after notification of the action, file a written appeal with the Tribal Council of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

The written appeal shall be heard by the Tribal Council within thirty (30) days from the date of filing. The Tribal Council shall make a final ruling on the appeal within ten (10) days from the date of hearing.

91.311 Validity.

(1) Superseding Previous Ordinances. This Ordinance governing sewer use, industrial wastewater discharges, sewer service charges and sewer connections and construction shall supersede all previous ordinances of the Tribe.

(2) Invalidation Clause. Invalidity of any section, clause, sentence or provision in the Ordinance shall not affect the validity of any other section, clause, sentence or provision of this Ordinance which can be given effect without such invalid part or parts.

(3) Amendment. The Tribe, through its duly authorized officers, reserves the right to amend this Ordinance in part or in whole whenever it may deem necessary.

91.312 Audit, Notification & Records.

(1) Biennial Audit. The Tribe shall review, at least every two (2) years, the wastewater contribution of its sewer users, the operation, maintenance and replacement expenses of the wastewater treatment facilities, and the sewer service charge system. Based upon this review, the Tribe shall revise the sewer service charge system, if necessary, to accomplish the following:

(a) Maintain a proportionate distribution of operation and maintenance expenses among sewer users based upon the wastewater volume and pollutant loadings discharged by the users.

(b) Generate sufficient revenue to pay the debt service costs and the total operation and maintenance costs necessary to provide for the proper operation and maintenance (including replacement) of the treatment works.

(c) Apply excess revenues collected from a class of users to the operation and maintenance expenses attributable to that class of users for the next year and adjust the sewer service charge rates accordingly.

(2) Annual Notification. The Tribe shall notify its sewer users annually about the sewer service charge rates. The notification shall show what portion of the rates are attributable to the operation and maintenance expenses, and debt service costs of the wastewater treatment facilities. The notification shall occur in conjunction with a regular bill.

(3) Records. The Tribe shall maintain records regarding wastewater flows and loadings, costs of the wastewater treatment facilities, sampling programs and other information which is necessary to document compliance with 40 CFR 35, Sub-part E of the Clean Water Act.

91.313 Effective Date.

This Ordinance shall take effect immediately as provided in Article VI, Section 1 of the Tribal Constitution.