

## CHAPTER 4-8 WATER QUALITY STANDARDS

### 4-8-1 Findings

(a) The Confederated Tribes of the Colville Reservation have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. It is the purpose of this Chapter to establish Tribal Water Quality Standards for the surface waters and ground waters located within the exterior boundaries of the Colville Indian Reservation. The quality of all surface and groundwater on the Reservation shall be protected to insure the health, economic, aesthetic and cultural well being of all people residing upon the Colville Indian Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(b) The human activities and factors which may adversely affect the quality of surface and ground waters on the Colville Indian Reservation and the natural resources which they support shall be regulated to protect and maintain the high quality of such waters and preserve their continued domestic, agricultural, industrial, recreational, cultural and other beneficial uses. The economy, health, safety and welfare of the people residing and doing business on the Colville Indian Reservation may be adversely affected by human activities carried out by both Indian and non-Indian people on trust and fee land within the Colville Indian Reservation. Inadequate control of such activities can contaminate and degrade surface and groundwater resources on which many people depend for domestic, agricultural, industrial, business, recreational, cultural and other uses.

(c) The Confederated Tribes of the Colville Reservation have jurisdiction to enforce Tribal Water Quality Standards in order to protect the economy, health, safety and welfare of the Reservation community.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

### 4-8-2 Territory Covered

The provisions of this Chapter, known as the Water Quality Standards Chapter of the Colville Law and Order Code, shall apply to all surface and groundwaters of the Colville Indian Reservation. Every human activity taking place on the Colville Indian Reservation which may affect the quality of the surface and groundwater resources of the Reservation shall be subject to the provisions of this Chapter.

### 4-8-3 Administration

The Environmental Trust Department of the Confederated Tribes of the Colville Reservation shall administer this Chapter. From time to time, and as it deems appropriate, the Department may recommend that the Business Council amend this Chapter. The Environmental Trust Department may propose that the Business Council adopt a Fee Schedule for the purpose of establishing fees which may be charged for permits and other administrative services provided by the Department under this Chapter.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

### 4-8-4 Definitions

(a) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source of any discharge under consideration. Background sampling location in an enforcement action would be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately upstream from each discharge.

(b) "Best Management Practices" or "BMP's" means a generic term describing minimum acceptable land use practice required to meet applicable Water Quality Standards.

(c) The "Colville Environmental Quality Commission" or "CEQC" means the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation as provided for under Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(d) “Ceremonial and Religious water use” means activities involving traditional Native American spiritual practices which involve, among other things, direct contact with water.

(e) “Council” or “Tribal Council” means the Colville Business Council of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(f) “Department” means the Environmental Trust Department of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(g) “Director” means the Director of the Environmental Trust Department.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(h) “EPA” means the US Environmental Protection Agency.

(j) “Fecal coliform” means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four (24) hours at 44.5 plus or minus 0.2 degrees Celsius.

(k) “Geometric mean” means the nth root of a product of n factors.

(l) “Ground water” means all water occurring below the ground surface within the exterior boundaries of the Colville Indian Reservation including but not limited to unconfined, semi-confined, and confined aquifers and all other water occurring within subsurface geologic formations, rock, and soil.

(m) “Mean detention time” means the time obtained by dividing a reservoir’s mean annual minimum total storage by the thirty (30) day, ten (10) year low-flow from the reservoir.

(n) “Non-point source” means any source contributing to water quality degradation where that degradation cannot be accounted for by any point source, including but not limited to, runoff from agriculture, silviculture, construction, and mining.

(o) “Permit” means a document issued by a public body which specifies waste treatment and control requirements and waste discharge conditions.

(p) “pH” means the negative logarithm of the hydrogen ion concentration.

(q) “Person” means any individual; association of individuals; partnership; private, public, tribal, or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal, state, or local government; or any governmental entity.

(r) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discreet fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(s) “Pollutant” includes but is not limited to dredged spoil, soil, slurry, solid waste, incinerator residue, sewage, sewage and industrial sludge, garbage and trash, chemical waste, biological nutrient, biological material, radioactive material, heat, discarded equipment, material and plant matter, rock, sand, gravel, mine tailings, discarded containers, and all other industrial, municipal or agricultural waste.

(t) “Pollution” means artificially made or induced change in the chemical, physical or radiological

characteristics of water.

(u) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(v) "Reservation" means the Colville Indian Reservation established on July 2, 1872 by Executive Order containing 1,389,000 acres more or less.

(w) "Reservation population" means all persons who reside on or otherwise conduct business or other activities on any lands, whether trust or fee, within the exterior boundaries of the Colville Indian Reservation.

(x) "Reservation resources" or "Reservation environment" means land, surface and ground water, fish, biota, plants, animals, air, wildlife and capital improvements on the Colville Indian Reservation.

(y) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(z) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs and seeps.

(aa) "Temperature" means water temperature expressed in degrees Celsius (°C).

(bb) "Tribe" means the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-622)

(bb) "Tribal Water Quality Standards," "Water Quality Criteria," or "Water Quality Standards" means the numerical quantification of specific regulatory parameters to protect ambient surface and ground water quality provided for by this Chapter.

(cc) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(dd) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

#### **4-8-5 General Considerations**

The following general guidelines shall apply to the Water Quality Standards and classifications set forth in sections 4-8-6 through 4-8-8.

(a) At the boundary between waters of different classifications, the Water Quality Standards for the higher classification shall prevail.

(b) The Water Quality Standards herein established shall not apply within an authorized dilution zone adjacent to or surrounding a wastewater discharge.

(c) Waste discharge permits will not be issued which would allow violations of Tribal Water Quality Standards.

(1) However, persons discharging wastes in compliance with the terms and conditions of permits shall not be subject to civil penalties on the basis that the discharge violated Tribal Water Quality

Standards.

(2) Permits shall be subject to modification by the Department whenever it appears to the Department that the discharge may violate Tribal Water Quality Standards. Modifications of permits, as provided herein, shall be subject to the same administrative review procedures as originally issued permits.

(d) Non-Point Sources and Tribal Water Quality Standards:

(1) It is recognized that many activities not subject to a waste discharge permit system are now taking place within the Reservation and it is further recognized that such activities may be in conflict with applicable Tribal Water Quality Standards until such time as a regulatory program is in place to control such non-permitted activities. Any such regulatory program shall provide methods or means whereby such activities shall comply with Tribal Water Quality Standards. Person conducting non-point source activities for which a regulatory program may be developed may however, not be subject to civil sanctions for violation of Tribal Water Quality Standards if such activities are either:

(A) Conducted in accordance with applicable best management practices set forth by the Tribe; or

(B) Subject to and in compliance with any regulatory order(s) issued by the Department.

(2) Best management practices or regulatory orders described in subsection 4-8-5(d)(1) shall be subject to modification by either the Council or the Department whenever it appears that the discharge may violate Tribal Water Quality Standards. Modification of best management practices or regulatory orders, as provided herein, shall be subject to the same administrative review procedures as the originally issued best management practices or regulatory orders.

(e) The Water Quality Standards herein established for the total dissolved gas shall not apply when the stream flow exceeds the seven (7) day, ten (10) year frequency flood.

(f) The total area and/or volume of a receiving water assigned to a dilution zone shall be as described in a valid discharge permit as needed and shall be limited to that which will:

(1) Not cause acute mortalities or sport, food, or commercial fish and shellfish species of established biological communities within populations or important species to a degree which damages the ecosystem; and

(2) Not diminish aesthetic values or other beneficial uses disproportionately.

(g) The antidegradation policy of the Tribe, which is a regulatory requirement of this Chapter shall be applicable to all surface and ground waters of the Reservation. The antidegradation policy provides that:

(1) Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed.

(2) No further degradation of any surface or ground waters lying within areas designated as unique water quality management areas shall be allowed.

(3) Whenever surface or ground waters are in fact of a higher quality than provided for by applicable Water Quality Standards, the existing higher water quality shall be protected. Wastes, other materials, and substances which may reduce the existing quality of such surface or ground

waters shall not be allowed to enter such waters. Except that the Department may allow such wastes, other materials, and substances to be placed in such waters in those instances where:

(A) It is clear that overriding considerations of the public interest will be served thereby, and

(B) All wastes and other materials and substances proposed for discharge into the said waters shall have first been subject to all known, available, and reasonable methods of treatment prior to such discharge.

(4) Whenever the natural conditions of surface or ground waters in their unaltered state and not affected by human activity are of a lower quality than the Water Quality Standards assigned thereto by this Chapter, the natural conditions shall constitute the applicable Water Quality Standards.

(5) The criteria and special conditions established in sections 4-8-6 through 4-8-8 may be modified for a specific water body, on a temporary basis not to exceed sixty (60) days, when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest. Such modification may for good cause be extended for an additional sixty (60) days. All such modifications shall be issued in writing by the Director or his designee subject to such terms and conditions as he or she may prescribe. The aquatic application of herbicides which may result in water use restrictions shall be considered an activity for which a temporary modification may generally be issued subject to conditions specified by the Department.

(6) No degradation of water quality shall be allowed if such degradation may interfere with or become injurious to existing water uses or may cause long-term or irreparable harm to the Reservation environment.

(7) No waste discharge permit shall be issued for any proposed discharge which may violated established Water Quality Standards, except as provided for under section 4-8-9(c).

(h) In applying Water Quality Standards the Department shall give due consideration to the precision and accuracy of the sampling and analytical methods used as well as existing conditions at the time.

(i) The analytical testing methods used to measure or otherwise evaluate Water Quality Standards shall to the extent practicable, be in accordance with the most recent editions of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, and "Methods for Chemical Analysis of Water and Wastes," published by the EPA, and other or superseding methods published and/or approved by the Department following consultation with and concurrence of the EPA.

(j) Deleterious concentrations of radioactive materials for all classes shall be as determined by the lowest practicable concentration attainable and in no case shall exceed EPA Drinking Water Regulations for radionuclides, as published in the Federal Register of July 9, 1976, or subsequent revisions thereof.

(k) Deleterious concentrations of toxic, or other non-radio-active materials, shall be determined by the Department in consideration of the "Quality Criteria for Water," published by EPA in 1976, and as revised, as an authoritative source for criteria and/or other relevant information.

(l) Nothing in this Chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with Section 316 of the Federal Clean Water Act (P.L. 95-217 as amended).

#### **4-8-6 General Water Use and Criteria Classes**

The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(a) Class I (Extraordinary):

(1) General characteristics: Water quality of this class shall markedly and uniformly exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic uses may included, but not be limited to, the following:

(A) Water supply (domestic, industrial, and agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(D) Ceremonial and religious water use.

(E) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 50 organisms/100 mL, with not more than ten (10%) percent of samples exceeding 100 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organisms shall not exceed a geometric mean value of 14 organisms/100mL, with not more than ten (10%) percent of samples exceeding 43 organisms/100mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 9.5 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 7.0 mg/L. When natural conditions, such as upwelling, occur, causing the dissolved oxygen to be depressed near or below 7.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed one hundred-ten (110%) percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 16.0°C (freshwater) and 13.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=23/(T+5)$  (freshwater) or  $t=8/(T-4)$  (saline water).

(i) When natural conditions exceed 16.0°C (freshwater) and 13.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 16.3°C (freshwater).

(G) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation within a range of less than 0.5 units.

(H) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(I) Toxic, radioactive, or deleterious material concentrations - shall be below those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect any water use.

(J) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(b) Class II (Excellent):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to the following:

(A) Water supply (domestic, industrial, and agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 100 organisms/100 mL, with not more than ten (10%) percent of samples exceeding 200 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organism shall not exceed a geometric mean value of 14 organisms/100 mL, with not more than ten (10%) percent of

samples exceeding 43 organisms/100 mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 8.0 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 6.0 mg/L. When natural conditions, such as upwelling occur causing the dissolved oxygen to be depressed near or below 6.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed one hundred-ten (110%) percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 18.0°C (freshwater) or 16.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=28 / (T+7)$  (freshwater) or  $t-12 / (T-2)$  (saline water).

(i) When natural conditions exceed 18.0°C (freshwater) and 16.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C and the maximum water temperature shall not exceed 18.3°C (freshwater).

(G) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation within a range of less than 0.5 units.

(H) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(I) Toxic, radioactive, or deleterious material concentrations - shall be below those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect any water use.

(J) Aesthetic values shall not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(c) Class III (Good):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for most uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.



(C) Fish and shellfish: salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms - freshwater: Fecal coliform organisms shall not exceed a geometric mean value of 200 organisms/100mL, with not more than 10 percent of samples exceeding 400 organisms/100 mL.

(B) Fecal coliform organisms - saline water: Fecal coliform organisms shall not exceed a geometric mean value of 100 organisms/100 mL, with not more than 10 percent of samples exceeding 200 organisms/100 mL.

(C) Dissolved oxygen - freshwater: Dissolved oxygen shall exceed 6.5 mg/L.

(D) Dissolved oxygen - saline water: Dissolved oxygen shall exceed 5.0 mg/L. When natural conditions, such as upwelling, occur, causing the dissolved oxygen to be depressed near or below 5.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(E) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(F) Temperature shall not exceed 21.0°C (freshwater) or 19.0°C (saline water) due to human activities. Temperature increases shall not, at any time, exceed  $t=34/(T+9)$  (freshwater) or  $t=16/T$  (saline water).

(i) When natural conditions exceed 21.0°C (freshwater) and 19.0°C (saline water), no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(iii) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 21.3°C (freshwater).

(4) pH shall be within the range of 6.5 to 8.5 (freshwater) or 7.0 to 8.5 (saline water) with a man-caused variation with a range of less than 0.5 units.

(A) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(B) Toxic, radioactive, or deleterious material concentrations shall be below those which adversely affect public health during characteristic uses, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect characteristic water uses.

(C) Aesthetic values shall not be reduced by dissolved, suspended, floating, or submerged matter not attributed to natural causes, so as to affect water use or taint the flesh of edible species.

(d) Class IV (Fair):

(1) General characteristics: Water quality of this class shall meet or exceed the requirements of selected and essential uses.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed a geometric mean value of 200 organism/100 mL, with not more than 10 percent of samples exceeding 400 organisms/100 mL.

(B) Dissolved oxygen shall exceed 4.0 mg/L, natural dissolved oxygen levels can be degraded by up to 0.2 mg/L by man-caused activities.

(C) Temperature shall not exceed 22.0°C due to human activities. Temperature increases shall not, at any time, exceed  $t=20/(T+2)$ .

(i) When natural conditions exceed 22.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(ii) For purposes hereof, “t” represents the permissive temperature change across the dilution zone; and “T” represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a man-caused variation within a range of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, or deleterious material concentrations shall be below those which adversely affect public health during characteristic uses, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect characteristic water uses.

(G) Aesthetic values shall not be interfered with by the presence of obnoxious wastes, slimes, aquatic growths, or materials which will taint the flesh of edible species.

(e) Lake Class:

(1) General characteristics: Water quality of this class shall meet or exceed the requirements for all or substantially all uses.

(2) Characteristic uses: Characteristic use may include but not be limited to, the following:

(A) Water supply (domestic, industrial, and agricultural);

(B) Stock watering;

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing spawning, and harvesting; crayfish rearing, spawning and harvesting;

(D) Wildlife habitat;

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed a geometric mean value of 50 organisms/100 mL, with not more than 10 percent of samples exceeding 100 organisms/100 mL.

(B) Dissolved oxygen - no measurable decrease from natural conditions.

(C) Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.

(D) Temperature - no measurable change from natural conditions.

(E) pH - no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over background conditions.

(G) Toxic, radioactive, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(H) Aesthetic values shall not be impaired by the presence of materials or their effects,

excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

(f) Special Resource Water Class (SRW):

(1) General characteristics: Water quality of this class will be varied and unique as determined by the Department. These are fresh or saline waters which comprise a special and unique resource to the Reservation.

(2) Characteristic uses: Characteristic uses may include but not be limited to, the following:

(A) Wildlife habitat.

(B) Natural food chain maintenance.

(3) Water quality criteria:

(A) Fecal coliform organisms shall not exceed natural conditions.

(B) Dissolved oxygen - no measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature - no measurable change from natural conditions.

(E) pH - no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over background conditions.

(G) Toxic, radioactive, or deleterious material concentrations shall not exceed those found in the state of nature.

(H) Aesthetic values shall not be impaired by the presence of materials of their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste.

**4-8-7 General Classifications**

General classifications applying to various surface water bodies not specifically classified under section 4-8-8 are as follows:

(a) All unclassified surface waters that are tributaries to Class I waters are classified Class I.

(b) Except for those specifically classified otherwise, all lakes of less than 2000 mg/L TADS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(c) All lakes on the Colville Indian Reservation with average TADS levels equal or exceeding 2000 mg/L and their feeder streams are classified as Class I Saline and Class I respectively unless specifically classified otherwise.

(d) All reservoirs with a mean detention time of greater than fifteen (15) days are classified Lake Class.

(e) All reservoirs with a mean detention time of fifteen (15) days or less are classified the same as the river section in which they are located.

(f) All reservoirs established on preexisting lakes are classified as Lake Class.

(g) All other unclassified waters of the Reservation are classified as Class II.

**4-8-8 Specific Classifications**

Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(a) Streams

Alice Creek.....	Class III
Anderson Creek.....	Class III
Armstrong Creek.....	Class III
Barnaby Creek.....	Class II
Bear Creek.....	Class III
Beaver Dam Creek.....	Class II
Bridge Creek.....	Class II
Brush Creek.....	Class II
Buckhorn Creek.....	Class III
Cache Creek.....	Class III
Canteen Creek.....	Class I
Capoose Creek.....	Class III
Cobbs Creek.....	Class III
Columbia River from Chief Joseph Dam to Wells Dam.....	Class II
Columbia River from northern Reservation boundary to Chief Joseph Dam.....	Class I
Cook Creek.....	Class I
Copper Creek.....	Class III
Cornstalk Creek.....	Class III
Cougar Creek.....	Class I
Coyote Creek.....	Class II
Deerhorn Creek.....	Class IV
Dick Creek.....	Class III
Dry Creek.....	Class I
Empire Creek.....	Class III
Faye Creek.....	Class I
Forty Mile Creek.....	Class III
Gibson Creek.....	Class I
Gold Creek.....	Class II
Granite Creek.....	Class II
Grizzly Creek.....	Class III
Haley Creek.....	Class IV
Hall Creek.....	Class II
Hall Creek, West Fork.....	Class I
Iron Creek.....	Class III
Jack Creek.....	Class III
Jerred Creek.....	Class I
Joe Moses Creek.....	Class IV
John Tom Creek.....	Class III
Jones Creek.....	Class I
Kartar Creek.....	Class III
Kincaid Creek.....	Class IV
King Creek.....	Class IV
Klondyke Creek.....	Class I
Lime Creek.....	Class III
Little Jim Creek.....	Class III

Little Nespelem .....	Class II
Louie Creek .....	Class III
Lynx Creek .....	Class II
Manila Creek .....	Class III
McAllister Creek .....	Class III
Meadow Creek .....	Class III
Mill Creek .....	Class II
Mission Creek .....	Class IV
Nespelem River .....	Class II
Nez Perce Creek .....	Class III
Nine Mile Creek .....	Class II
Nineteen Mile Creek .....	Class III
No Name Creek .....	Class II
North Nanamkin Creek.....	Class III
North Star Creek.....	Class III
Okanogan River from Reservation north boundary to Columbia River.....	Class II
Olds Creek.....	Class I
Omak Creek.....	Class II
Onion Creek .....	Class II
Parmenter Creek .....	Class IV
Peel Creek .....	Class IV
Peter Dan Creek .....	Class IV
Rock Creek.....	Class I
San Poil River.....	Class I
Sanpoil, West Fork .....	Class II
Seventeen Mile Creek .....	Class III
Silver Creek.....	Class III
Sitdown Creek .....	Class II
Six Mile Creek .....	Class IV
South Nanamkin Creek.....	Class III
Spring Creek.....	Class III
Stapaloop Creek .....	Class III
Stepstone Creek.....	Class III
Stranger Creek.....	Class II
Strawberry Creek.....	Class III
Swimptkin Creek.....	Class III
Three Forks Creek.....	Class I
Three Mile Creek.....	Class IV
Thirteen Mile Creek .....	Class II
Thirty Mile Creek.....	Class II
Trail Creek.....	Class III
Twenty-five Mile Creek .....	Class III
Twenty-one Mile Creek.....	Class III
Twenty-three Mile Creek .....	Class III
Wannacot Creek .....	Class III
Wells Creek.....	Class I
Whitelaw Creek.....	Class IV
Wilmont Creek .....	Class II
 (b) Lakes	
Apex Lake .....	LC
Big Goose Lake.....	LC

Bourgeau Lake .....	LC
Buffalo Lake.....	LC
Camille Lake .....	LC
Cody Lake .....	LC
Crawfish Lake .....	LC
Elbow Lake .....	LC
Fish Lake.....	LC
Gold Lake.....	LC
Great Western Lake.....	LC
Johnson Lake.....	LC
LaFleur Lake .....	LC
Little Goose Lake .....	LC
Little Owhi Lake .....	LC
McGinnis Lake.....	LC
Nicholas Lake.....	LC
Omak Lake .....	SRW
Owhi Lake.....	SRW
Penley Lake .....	SRW
Rebecca Lake .....	LC
Round Lake .....	LC
Simpson Lake.....	LC
Soap Lake.....	SRW
Sugar Lake .....	LC
Summit Lake .....	LC
Twin Lakes.....	SRW

**4-8-9 Permits**

- (a) No person shall discharge any waste from a point source into Reservation waters without having first obtained a permit from either the BPA or the Department, as applicable.
  
- (b) The Department may, through the issuance of regulatory permits, directives, and orders, control miscellaneous waste discharge not covered by section 4-8-9(a).
  
- (c) From time to time the Department may authorize certain temporary activities which may temporarily reduce water quality below those set by this Chapter (4-8-5 and 4-8-6) when such activities found to be overriding public benefit, provided that all such temporary authorizations shall be for a thirty (30) day period or less.
  
- (d) The Department may in furtherance of section 4-8-9(b) require any prospective or current discharge to, among other things, perform such water quality monitoring tasks as might be necessary to determine the pre and post discharge conditions, mixing zone requirements, and permit parameters.
  
- (e) To ascertain whether the regulations, waste disposal permits, orders, and directives promulgated and/or issued by the Department, the Council, or EPA are being complied with a continuing surveillance program shall be conducted by the Department. This continuing surveillance program shall include, among other things, the following:
  - (1) Inspecting treatment and control facilities;
  - (2) Monitoring and reporting waste discharge characteristics; and
  - (3) Monitoring receiving water quality.

#### **4-8-10 Violations, Enforcement and Civil Penalties**

(a) The Department shall be notified of all suspected violations and accidental discharges.

(1) Any person may apply in writing to the Department and the Department will initiate an investigation and take action upon any suspected or alleged violation of any provision of this Chapter or of any order, permit, or regulation issued or promulgated under the authority of this Chapter.

(2) Any person engaged in any operation or activity which results in a spill or discharge which may cause pollution of the water of the Reservation contrary to this Chapter shall immediately notify the Department. Any person who fails to notify the Department as soon as he either knows or should have known about the spill or discharge is deemed in violation of this Chapter and, upon an administrative finding thereof after notice and hearing as provided by the Colville Administrative Procedures Act, shall be levied an administrative civil penalty of not more than ten thousand dollars (\$10,000) per day that such violation continues.

(b) Notice of Alleged Violations:

(1) Wherever the Department has reason to believe that there has occurred a violation of an order, permit, or other requirement issued or promulgated under authority of this Chapter, the Director shall cause written notice to be served personally or by certified mail return-receipt requested upon the alleged violator or its agent for service of process. The notice shall state the provision alleged to be violated, the facts alleged to constitute a violation, and may include the nature of any corrective action proposed to be required.

(2) Each cease and desist and clean-up order issued pursuant to sections 4-8-10(d) and 4-8-10(e) shall be accompanied by or have incorporated in it the notice provided for in subsection 4-8-10(b)(1) of this section unless such notice shall have prior thereto been given.

(c) Hearing Procedures for Alleged Violation:

(1) In any notice given under section 4-8-10(b), the Department may require the alleged violator to appear before it for a hearing and to answer each alleged violation. Such hearing shall be held no sooner than fifteen (15) days after service of this notice, except the Department may set an earlier date for hearing if so requested by the alleged violator or if any emergency exists. This hearing shall be conducted in accordance with the Colville Administrative Procedures Act.

(2) If the Department does not require an alleged violator to appear for a hearing, the alleged violator may request the hearing. Such request shall be in writing and shall be filed with the Department no later than thirty (30) days after service of the notice under section 4-8-10(b). If such a request is filed, a hearing shall be held within a reasonable time.

(3) If a hearing is held pursuant to the provisions of this section, it shall be recorded and this record be made available to the public. All parties may respond to the notice served under section 4-8-10(b) and may present evidence and argument on all issues, call witnesses, and conduct cross-examination required for a full disclosure of the facts as provided for in the Colville Administrative Procedures Act.

(d) Hearing Procedures for Alleged Violation: Upon a finding and determination, after hearing, that a violation of a permit provision, Departmental directive or order has occurred, the Department may suspend, modify, or revoke the pertinent permit, or take such other action with respect to the violation as may be authorized by applicable law.



(e) Cease and Desist Orders: If the Department determines, with or without a hearing, that there exists a violation of any provision of this Chapter or of any order, permit, or other requirement of this Chapter, the Department may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which acts or practices complained of must be terminated.

(f) Clean-Up Orders: The Department may issue orders to any person to clean up material which he, or his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposit in or near Reservation waters which may pollute them. The Department may also request that the Tribal attorney proceed and take appropriate action.

(g) Restraining Orders and Injunctions: In the event any person fails to comply with either a cease and desist order or a clean-up order which order or orders are not subject to stay pending administrative or judicial review, the Department may request the Tribal attorney to investigate, and if appropriate, bring suit for temporary injunction to prevent any further or continued violation of such order or orders. In any such suit the findings of the Department based upon evidence in the record, shall be given due difference by any reviewing administrative body or court.

(1) Emergencies shall be given precedence over all other such matters pending in Tribal Court. The institution of such injunction proceedings by the Tribal attorney on behalf of the Department shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceedings.

(h) Civil Penalties:

(1) Any person who violates any provision of any permit issued under this Chapter or any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand (\$10,000) per day for each day during which such violation occurs.

(2) Penalty amounts shall be determined after hearing and may be collected by the Tribe by action instituted in Tribal Court by the Tribal attorney for collection of such penalty. A stay of any order of the Tribe pending judicial review shall not relieve any person from any liability under subsection 4-8-10(h)(1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty.

(i) Falsification and Tampering: Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Chapter shall be subject to a civil penalty of not more than five hundred dollars (\$500) for each individual instance. Each day that invalid monitoring data is generated as a result of such wrongful action shall constitute a separate violation.

(j) Proceeding by Other Parties:

(1) The factual or legal basis for proceedings or other actions that shall result from a violation of this Chapter inure solely to the benefit of the Tribe is not intended by this Chapter, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the Department or the Tribe, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the Tribe.

(2) A permit issued pursuant to this Chapter may be introduced in any court of law as evidence

that the permittee's activity is not a public or private nuisance. Introduction into any evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not public or private nuisance.

**4-8-11 Waiver of Regulations**

Whenever a strict interpretation of this Chapter would result in extreme hardships the Department may waive or modify such regulation or portion thereof, provided such waiver or modification is consistent with the intent of this Chapter and no public health hazard will result.

**4-8-12 Cooperation with Public Agencies—Grants and Gifts**

The Department is authorized subject to approval of the Tribal Council, to accept, receive, disburse, and administer grants or other funds or gifts from any source, for the purposes of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. The Department is authorized to negotiate, subject to approval by the Tribal Council, inter-governmental agreements and other cooperative agreements which may create, modify, or change duties established by this Chapter, providing that creation of new regulatory requirements or changes in existing regulatory requirements must comply with the procedural requirements of the Colville Administrative Procedure Act applicable to rule-making actions before such regulations become effective.

**4-8-13 Statutes and Trust Responsibility Not Modified**

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

**4-8-14 Severability**

Should any part of this Chapter be declared unconstitutional or invalid for any reason such declaration shall not affect the validity of the remainder of this Chapter.

(Chapter 4-8 Adopted 8/6/84, Resolution 1984-526)  
(Amended 1/18/85, Resolution 1985-20)