

TITLE 18
LUMMI NATION CODE OF LAWS
SOLID WASTE CONTROL AND DISPOSAL CODE

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TITLE 18
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Chapter 18.01 Purpose and Scope

18.01.010 Purpose

This Title is adopted to protect the health, safety, and welfare of all the residents of the Lummi Indian Reservation (“Reservation”) and to respond to the need for proper control and disposal of solid wastes on the Reservation. This Title provides the policy framework and delegation of administrative authority for a coordinated program to address the accumulation, collection, and disposal of solid waste; the resource recovery, recycling, and utilization of recyclable materials; and the creation and operation of disposal sites and transfer stations.

18.01.020 Scope

Solid wastes covered under this Title include bulk wastes, industrial wastes, infectious wastes, hazardous wastes, food wastes, animal wastes, yard wastes, paper wastes, recyclables, and asbestos. Sewage and septic systems are not included in the scope of this Title.

Chapter 18.02 Definitions

18.02.010 General Interpretive Rules

For the purpose of this Title, words used in the present tense include the future; the singular number includes the plural; the masculine form includes the feminine; the word “shall” is mandatory and not permissive; and the term “this Title” shall be deemed to include all amendments hereafter made to this Title. Unless specifically defined below, words or phrases used in this Title shall be interpreted so as to give them the meaning they have in common usage and to give this Title its most reasonable application.

18.02.020 Definitions

As used in this Title, each of the following terms shall have its corresponding meaning:

Animal waste: solid and semi-solid animal excrement and animal carcasses.

Asbestos waste: material containing more than 1 percent asbestos by weight and that, by hand pressure, can be crumbled, pulverized, or reduced to powder when dry.

Bulk waste: includes, but is not limited to, construction and demolition debris; discarded residential, commercial and industrial appliances, equipment and furniture; trees and stumps; vehicle parts and tires; and other oversized wastes whose large size precludes or complicates their handling by normal solid waste collection and disposal methods.

Commercial: activities of, in, or, relating to commerce and/or activities related to a business, profession, or other endeavor having financial gain as an object.

Composting: the controlled degradation of organic solid waste, yielding a product for use as a soil conditioner,

Food waste: the organic residue generated by the handling, storage, sale, preparation, cooking and serving of foods, commonly called garbage.

Franchise: A franchise to operate a waste or solid waste disposal site or resource recovery facility or collection service, including collection, transfer and transport, issued by the Lummi Indian Business Council pursuant to this Title.

Hazardous waste: A waste or combination of wastes as identified in 40 CFR 261.3.

Health officer: the Lummi Nation Tribal Health Officer or his authorized representative.

Industrial waste: waste or solid waste resulting from any process of industry or manufacturing or from the development or recovery of any natural resources.

Infectious waste: includes cultures and stocks of infectious agents and any discarded materials those agents come into contact with;

contaminated sharps (i.e., equipment that may cause punctures or cuts); pathological waste; human blood and blood products; surgical wastes; and other waste identified by the Health Officer as infectious waste.

Landfill: A disposal site operated by means of compacting and covering waste or solid waste at specifically designated intervals.

Paper waste: solid wastes including newspaper, cardboard, and other paper products.

Person: An individual, firm, corporation, association, partnership, government agency, industry, or any other entity whatsoever.

Residential solid waste: wastes generated by the normal activities of households, including, but not limited to, food wastes, rubbish, ashes and bulk wastes.

Rubbish: a general term for solid waste, excluding food wastes and ashes, taken from residences, commercial establishments and institutions.

Solid waste: any garbage, rubbish, and other discarded solid materials, including materials resulting from industrial, commercial, construction, demolition and agricultural operations, but does not include solid or dissolved materials in domestic sewage.

Transfer station: a site at which solid wastes are concentrated for transport to a processing facility or land disposal site. A transfer station may be fixed or mobile.

Vector: a carrier that is capable of transmitting a pathogen from one organism to another.

Chapter 18.03 Administration and Authority

18.03.010 Health Officer

The Health Officer has authority to conduct inspections to determine whether the requirements of this ordinance are being fulfilled, to declare an area a health and safety hazard, and to remove or abate nuisances as defined herein. The Health officer may bring

actions in Lummi Tribal Court to enforce the provisions of this Title. The Lummi Indian Business Council shall designate the Health Officer by resolution.

Chapter 18.04 Prohibited Acts

18.04.010 Unlawful Dumping

Except as permitted by this Title, it shall be unlawful for any person to dump, or deposit, or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the water. Nothing herein shall prohibit a person from dumping or depositing agricultural waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate any section of the Lummi Nation Code of Laws, regulations adopted there under, or applicable Federal regulation, or create a nuisance.

(a) Whenever solid waste, disposed in violation of this ordinance, contains three or more items bearing the name or address or other identifying information of one person or members of one household, it shall be presumed that the person or household whose identifying information appears on such items generated and unlawfully disposed of the waste.

(b) When the Health Officer investigates a case of unlawful dumping on lands owned by the Tribe and finds inadequate identifying evidence in the solid waste, the Tribe shall bear responsibility for removal and proper disposal of the solid waste. For cases involving all other lands, the Health Officer may order the property owner or person in possession of the property to remove said solid waste and dispose of it at an appropriate permitted facility. Failure of the property owner or person in possession of the property to remove the waste is a violation of this Title subject to enforcement under Chapter 18.07 of this Title.

18.04.020 Accumulation of Solid Waste Prohibited

Except as provided in this Title, no person shall accumulate, store, collect, maintain, or display on private property, waste or solid

waste that is offensive or hazardous to the health and safety of Reservation residents or that creates offensive odors, a condition of unsightliness, or is likely to attract or harbor vectors. Storage, collection, maintenance or display of wastes or solid wastes in violation of this section shall be considered to be a public nuisance and shall be subject to enforcement under Chapter 18.06 of this Title. Bulk waste including, but not limited to; appliances, vehicle parts, building demolition wastes, industrial wood wastes, land clearing debris, discarded furniture and bedding or scrap metals shall not be accumulated or stored in a visible location for more than 30 days. Bulk waste shall not be accumulated or stored in a manner that creates offensive odors or is likely to attract or harbor vectors. Residential solid waste, debris or garbage shall not be accumulated or stored more than fourteen days.

18.04.030 Burning

Open burning of solid or liquid waste is prohibited with the following exceptions:

- (a) ceremonial burnings, which may occur at any time without a permit; and
- (b) burning of household paper and cardboard garbage only in a burn barrel with a wire mesh cover; and
- (c) after a burning permit has been issued, the infrequent burning of agricultural wastes, uncontaminated combustible construction waste and slash from forest clearing or harvest operations. Property owners intending to burn such wastes must first obtain a permit to do so from the Health Officer. The permit shall identify the date and location for the permitted burn, as well as the type and approximate volume of waste to be burned.

18.04.040 Landfills Prohibited

Operation or construction of a landfill within the reservation shall be prohibited unless licensed pursuant to standards adopted by the Lummi Indian Business Council and consistent with applicable federal law.

Chapter 18.05 Collection, Storage, Transportation, and Disposal of Waste

18.05.010 Application of Federal Guidelines

Where not in conflict with specific provisions of this Title, the guidelines of 40 CFR 243, as amended from time to time, shall apply to the collection, storage, transportation and disposal of solid waste.

18.05.020 Infectious Waste

Public or private health facilities or other persons generating infectious waste shall have contractual arrangements for its proper collection, storage, transportation and disposal. Any bags used shall be appropriately labeled as containing infectious waste. Any bags used for infectious waste shall be secured and made leakproof. Sharps must be contained in leakproof rigid, puncture resistant, break resistant, labeled containers with lids. The collection and disposal service provider shall conform to federal standards and guidelines in the transportation and disposal of infectious waste.

18.05.030 Unregistered, Non-operational Vehicles

(a) Owners of vehicles that are unregistered, or which are not operational for a period of six months, shall arrange for sale of the vehicle, or placement of the vehicle in a closed garage, or transportation of the vehicle to a junkyard licensed to accept vehicles.

(b) The Health Officer shall have authority to impound pursuant to the procedures of Title 7 of this Code any unregistered vehicle, any vehicle which is not operational for a period of six months or more, or which is harboring or attracting rodents or other vectors. The Health Officer may also seek an award of damages from the vehicle's owner equal to the costs of removing the vehicle from the reservation and disposing of it.

(c) Residents who can demonstrate financial hardship may petition the Health Officer for relief from the requirements of this section by surrendering the title to one or more vehicles subject to this section to the Lummi Nation. The Health Officer shall arrange for removal

and sale of such vehicles.

(d) Persons holding a valid tribal business license for the repair or sale of vehicles must operate in compliance with Title 15 of this Code, and must operate in a manner so as not to pollute the ground, water or air. If not so operated, any and all vehicles shall be presumed to be non-operational and subject to removal under this Title or under Title 7 of this Code.

18.05.040 Construction and Demolition Wastes

(a) Construction-related materials that do not contain asbestos shall be separated into uncontaminated combustible materials and other waste for collection or hauling to an approved disposal site.

(b) Uncontaminated combustibles may be burned in compliance with 18.04.030 of this Title.

(c) Asbestos wastes shall be collected and disposed of in accordance with 40 CFR 61.156 as amended from time to time, and the National Emission Standards for Hazardous Air pollution (NESHAP) regulations, as amended from time to time. Any person who generates asbestos wastes must properly dispose of it, or arrange for its proper disposal.

18.05.050 Animal Wastes

Carcasses of animals shall be buried within 24 hours of death. All such burials shall take place on property of the animal's owner and in a manner that avoids attracting or harboring vectors and prevents offensive odors. If such burial is not possible, the animal's owner shall otherwise dispose of, or arrange for the disposal of the carcass in a lawful manner within 48 hours of the animal's death.

18.05.060 Composting

Where possible, residents shall make efforts to compost yard wastes and other organic materials on their property. Composting activities shall be maintained in a manner that does not create a nuisance, or attract rodents and/or other vectors.

Chapter 18.06 Collection and Disposal Franchises

18.06.010 Award of Franchises

Such person, firm or corporation as the Tribe may license, hereinafter referred to as a collection service, may be granted the exclusive right, privilege, and franchise of collecting, hauling, storing, and transferring solid waste for compensation on the Reservation, under terms and conditions established by the Lummi Indian Business Council and guidelines established in 40 CFR 243, as amended from time to time.

18.06.020 Types of Franchises

(a) When the Tribe finds that the applicant is able to provide complete and adequate service of all types within the Reservation it may issue an exclusive franchise for the Reservation to the applicant.

(b) If the Tribe finds that the need for service justifies action before a complete investigation and final determination can be made, the Tribe may issue a temporary franchise, valid for a stated period not to exceed six months, entitling a person to serve a defined service area or customers for that period.

(c) If the Tribe finds that the applicant for a collection franchise cannot provide complete service to a single customer, a group or type of customers, or for a particular type or unusually large quantity of recyclable material or solid waste, it may issue a franchise for joint service with another person who can provide supplemental service.

Chapter 18.07 Enforcement

18.07.010 Complaints

A complaint alleging the presence of a nuisance or other violation of this title may be filed with the Health Officer by any resident of the Reservation at least eighteen years of age.

18.07.020 Investigation

The Health Officer may, and upon the written complaint of any person shall, make an investigation to determine whether or not a violation of this title has occurred. For the

purpose of such investigation, the Health Officer or appointed representative may enter on private property at reasonable times to determine compliance.

18.07.030 Health Officer's Authority

After investigation, if the Health Officer finds that there is reasonable cause to believe that a violation of this Title has occurred, he shall

(a) Order immediate abatement if he finds that the existence of the violation poses an extreme hazard to the health, safety and welfare of Reservation residents. If the person in charge of the property is unwilling or unable to carry out the necessary action in a reasonable period of time under the circumstances, or cannot be located after diligent inquiry, then the Health Officer and his designees may enter the premises and perform actions necessary to immediately abate the violation; or

(b) If no extreme hazard to health, safety and welfare exists, the Health Officer may file an action in Tribal Court, requesting that the Court order that a notice be issued and served upon the owner, tenant, occupant, and/or person in possession of the premises where the nuisance is alleged or violation of this Title is claimed to exist, requiring such person or persons to appear before the Tribal Court at the time and place stated in the notice to show cause why a violation of this Title should not be declared to exist on the premises. If an owner, tenant, or person in possession of the premises cannot be found within the Reservation for service of notice, the notice can be served by certified mail, return receipt requested, addressed to the owner of the property. The notice shall state that if a violation is found to exist, costs of abatement shall be collected from the person or persons served, and that such costs may be collected as a lien against the property, unless prohibited by tribal or federal law.

18.07.040 Tribal Court Hearing

At the time and place described in the notice, the Tribal Court shall conduct a hearing on the existence of the alleged violation, and if the Tribal Court finds that a violation has occurred, it shall declare the existence of a nuisance and order the abatement of the

nuisance. The Health Officer or his designee shall appear, and the person or persons served with notice of the hearing may appear, and such person or persons may be represented by counsel at their own expense.

18.07.050 Nuisance Abatement

Where an order of abatement is issued by the Health Officer or the Tribal Court under this Chapter, the Health Officer or his designee may remove from the subject premises the waste or solid waste found to be the cause of such nuisance. Where such removal is performed by the Health Officer, or the Officer's agent or designee, the Tribe shall not be liable for any trespass or conversion as to any real or personal property and the Tribal Court shall order the abatement costs shall be collected from the generator of the waste, the property owner and/or the person who violated this Title, or the costs may be collected as a lien against such property, unless prohibited by tribal or federal law.

Chapter 18.08 General Provisions

18.08.010 Severability

If any section, clause, or provision of this code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the code and its application to any other person or circumstance shall still be valid and in effect.

18.08.020 Effective Date

This title shall take effect thirty days after the date of its enactment by resolution of the Lummi Indian Business Council.

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