WAGANAKISING ODAWAK STATUTE 2016-008

NIBIISH NAAGDOWEN "THE CARE OF WATER": CLEAN WATER ACT

TABLE OF CONTENTS

SECTION I. TITLE....1

SECTION II. PURPOSE....1

A. Goals and Objectives....1

B. Statutory Construction....3

SECTION III. DEFINITIONS....3

SECTION IV. JURISDICTION....10

SECTION V. AUTHORITIES AND DUTIES OF THE ENVIRONMENTAL SERVICES PROGRAM 10

A. General Authorities....11

B. Regulations....12

C. Duties....12

SECTION VI. NO WAIVER OF SOVEREIGN IMMUNITY....13

PART 2. LTBB WATER QUALITY STANDARDS AND PLANNING....13

Subpart A. Water Quality Standards....13

SECTION VII. WATER QUALITY STANDARDS....13

A. Promulgation of Standards....13

B. Designated Uses....13

C. Criteria....14

D. Methods Used....15

E. Compliance Schedules....15

SECTION VIII. REVIEW OF WATER QUALITY STANDARDS....15

SECTION IX. IMPLEMENTATION OF WATER QUALITY STANDARDS....15

Subpart B. Water Quality Planning and Management....16

SECTION X. COORDINATED WATER QUALITY PLANNING AND MANAGEMENT....16

SECTION XI. IDENTIFICATION OF WATERS....16

A. Section XI Implementation....16

B. Effluent limitations....17

C. Thermal discharges....17

D. Approval by Administrator 17
SECTION XII. TOTAL MAXIMUM DAILY LOADS AND WASTELOAD ALLOCATIONS/LOAD ALLOCATIONS 17
A. Section XII Implementation 17
B. Total maximum daily load 18
C. Total maximum daily thermal load 18
D. Approval by Administrator 18
E. Additional identification 19
SECTION XIII. WATER QUALITY MONITORING, MANAGEMENT PLANS AND REPORTS 19
A. Monitoring 19
B. Management Plans 19
C. Reports 19
SECTION XIV. CONTINUING PLANNING PROCESS 20
A. Plan 20
B. Elements of Plan 20
Subpart C. Certification of Compliance 21
SECTION XV. CERTIFICATION OF COMPLIANCE WITH FEDERAL WATER POLLUTION CONTROL REQUIREMENTS 21
A. Certification of compliance 21
B. Rules for grant or denial of certification 21
C. Limitations and monitoring requirements 22
PART 3. SURFACE WATER DISCHARGE AND PRETREATMENT REQUIREMENTS 22
SECTION XVI. IMPLEMENTATION. 22
SECTION XVII. REGULATIONS REQUIRED 22
Subpart A. Surface Water Discharges 22
SECTION XVIII. PERMIT REQUIRED TO DISCHARGE INTO SURFACE WATER 23
A. Prohibitions 23
B. Exemptions 23
C. Grounds for issuance of permit 23
D. Grounds for denial of permit 24
E. General Permit 24
SECTION XIX. EFFLUENT LIMITATIONS ENFORCED IN ISSUANCE OF PERMITS 25
A. Permit Conditions 25
B. Time for Compliance 26

C. Variances 26
SECTION XX. COMPLIANCE SCHEDULES 27
SECTION XXI.EXTENSION OF TIME TO MEET WATER QUALITY AND EFFLUENT STANDARDS 27
A. Required Findings 27
B. No Excuse of Noncompliance 28
SECTION XXII. RECORDING, REPORTING, AND INSPECTION CONDITIONS 28
SECTION XXIII. DISPOSAL OF POLLUTANTS INTO WELLS 28
Subpart B. Pretreatment Requirements 28
SECTION XXIV. PRETREATMENT STANDARDS 28
SECTION XXV. CONDITIONS IN PERMITS ISSUED FOR POTWS 29
A. Compliance with Clean Water Act 29
B. Other conditions 29
SECTION XXVI. OTHER AUTHORITY OF PROGRAM REGARDING POTWS 30
PART 4. PROTECTION AND MANAGEMENT OF WETLANDS 31
SECTION XXVII. WETLANDS PROTECTION PROGRAM 31
A. Establishment of Wetlands Protection Program and Effective Date 31
B. Authorities and Duties of Program 31
SECTION XXVIII. APPLICABILITY 32
SECTION XXIX. WETLANDS VERIFICATION 33
SECTION XXX. PERMIT REQUIREMENT 33
A. Wetland Modification 33
B. Delineation Requirement 33
SECTION XXXI. WETLANDS MITIGATION 34
A. Mitigation 34
B. Mitigation Determinations 34
PART 5. SEWAGE SLUDGE 35
SECTION XXXII. REGULATION OF THE USE AND DISPOSAL OF SEWAGE SLUDGE 35
A. Establishment of Program 35
B. Content of Regulations 35
SECTION XXXIV.PERMITS 36
A. Permit requirement 36
B. Consistency with sewage sludge regulations 36
C. Applicability to all treatment works 36

SECTION XXXV. RECORDKEEPING, REPORTING, AND INSPECTIONS 36
PART 6. PERMIT PROCEDURES 37
SECTION XXXVI. IMPLEMENTATION 37
SECTION XXXVII. CONDITIONS OF PERMITS 37
A. Submission of information 37
B. Consent to jurisdiction 37
SECTION XXXVIII. TERM OF PERMITS 38
A. Fixed term 38
B. Renewals 38
SECTION XXXIX. NOTICE OF ACTIONS 39
SECTION XL. ISSUANCE, REVOCATION, OR DENIAL OF PERMITS 39
A. Authority 39
B. Grounds for revocation, modification or suspension 39
C. Notice and hearing 40
D. Environmental Appeals Board Review 40
E. Effective date 40
SECTION XLI. CONFLICT OF INTEREST 41
SECTION XLII. FUNDING OF PERMIT PROGRAM 41
PART 7. NON-POINT SOURCE MANAGEMENT PROGRAM 42
SECTION XLIII. NON-POINT SOURCE ASSESSMENT REPORT 42
A. Content of report 42
B. Basis for report 43
SECTION XLIV. NON-POINT SOURCE MANAGEMENT PROGRAM 43
A. Program submission 43
B. Program Contents 43
C. Utilization of Local and Private Experts 44
D. Development on Watershed Basis 44
PART 8. CLEAN LAKES PROGRAM 44
SECTION XLV. BIENNIAL REPORT 44
SECTION XLVI. CONTRACTS AND INTERAGENCY AGREEMENTS 45
PART 9. WATERSHED PROTECTION PROGRAM 46
SECTION XLVII. DEVELOPMENT OF PROGRAM 46
PART 10. ENFORCEMENT 46
SECTION XLVIII. RECORDS, INSPECTIONS, MONITORING AND ENTRY 46

A. Recordkeeping, reporting and monitoring....46
B. Entry and inspections....47
C. Availability of information to public....48
D. Confidential information....48
SECTION XLIX. GENERAL ENFORCEMENT AUTHORITY....49
A. In general....49
B. Requirements for Citations....50
C. Emergency Citations....51
D. Enforcement of Citations and Orders....52
E. Injunctive Relief....52
SECTION L. JUDICIAL ENFORCEMENT....52
A. Civil Judicial Enforcement....52
B. Criminal Penalties....53
C. Jurisdiction and Venue of Tribal Court....54
D. Calculation of Penalties....54
E. Failure to Pay Penalty....55
F. Seizure of Property....55
SECTION LI. ADMINISTRATIVE ASSESSMENT OF PENALTIES....55
A. Basis for Penalty Citation....56
B. Hearing Requirement....56
C. Failure to Pay Penalty....56
D. Calculation of Penalty....57
PART 11. RULEMAKING AND JUDICIAL REVIEW....57
SECTION LII. RULEMAKING....57
A. Public Notice and Comment....57
B. Final Rule....57
SECTION LIII. REVIEW IN TRIBAL COURT....58
A. Petitions for Review of Final Actions of the Program....58
B. Review of Regulations....58
C. Other Limitations on Review....59
D. Standards for Review....59
E. Relief Available....60

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
NIBIISH NAAGDOWEN "THE CARE OF WATER": CLEAN WATER ACT

SECTION I. TITLE

This Act may be cited as the Little Traverse Bay Bands Clean Water Act ("LTBB CWA").

SECTION II. PURPOSE

A. Goals and Objectives

Discharges of pollutants into LTBB Waters from point and non-point sources, introduction of pollutants by industrial users into publicly owned treatment works, damage to wetlands, improper management of sewage sludge, and other activities that degrade tribal waters are threats to the political integrity, economic security, and health, welfare and environment of the Reservation and its residents. It is the purpose of this Act to address these threats by providing authorities to prevent, abate, and control pollution of LTBB waters; to research and plan the development and use (including restoration, preservation, and enhancement) of land and water resources within the Reservation; and to ensure that degradation of LTBB waters is minimized and economic growth occurs in a manner consistent with the preservation of existing clean LTBB water resources. To carry out these purposes, this Act provides for:

1. in Part 2 of this Act:
   a. the establishment of water quality standards to protect fish and wildlife and the domestic, cultural, ceremonial, agricultural and recreational uses of LTBB waters (Subpart A);
   b. water quality monitoring, planning and management activities to achieve those standards (Subpart B); and
   c. review and certification of federal permits for discharges into LTBB waters to ensure that permitted discharges will meet tribal water quality standards;

2. in Part 3 of this Act:

   a. the requirement that every point source (unless specifically exempted) discharging pollutants into LTBB waters have a valid permit ensuring that present and future point source discharges comply with applicable effluent limitations within a specified timeframe (Subpart A); and

   b. the establishment of pretreatment standards to control the introduction of pollutants by industrial users into publicly owned treatment works (Subpart B);

3. in Part 4 of this Act, assessment, monitoring and protection of wetlands;

4. in Part 5 of this Act, regulation of the use, disposal, storage, and transportation of sewage sludge;

5. in Part 6 of this Act, procedures for issuing, renewing, revoking, and denying permits for discharges into LTBB waters;

6. in Part 7 of this Act, the development of a program to control pollution of LTBB waters from non-point sources;

7. in Part 8 of this Act, the development of a program to restore water quality in Reservation lakes;

8. in Part 9 of this Act, the development of a program to protect LTBB waters on a watershed basis;

9. in Part 10 of this Act, provisions for enforcement of this Act, including regulations, permits, citations, and other requirements issued pursuant to this Act, and for issuance of emergency citations in the event of an imminent and substantial endangerment to public health or welfare or the environment caused by point or non-point source discharges; and

10. in Part 11 of this Act, procedures for promulgating regulations to implement this Act and obtaining review in Tribal Court of final actions taken by the Program pursuant to this Act.

B. Statutory Construction

1. In general. The provisions of this Act shall be liberally construed to fulfill the intent and purpose of this Act and so as not to conflict with the applicable laws of the LTBB and the United States. Nothing contained in this Act shall be construed to abridge or alter rights of action or remedies in equity under treaties, the common law or statutory law, nor shall any provisions of this LTBB CWA or any action taken by virtue thereof be construed as preventing the LTBB or individuals from the exercise of their rights under treaties, the common law or statutory law to suppress nuisances or to abate pollution.

2. Water Quantity Rights. The right of the LTBB to certain quantities of water and the authority of the LTBB to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act.

SECTION III. DEFINITIONS

A. For the purposes of this Act –

1. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

2. "Applicant" means any person or entity applying for a permit or license under this Act.

3. "Best management practice" or "BMP" means methods, measures or practices undertaken to prevent or reduce the pollution of LTBB Waters, including to control, restrict, or diminish non-point sources of pollution, that are consistent with these Standards. BMPs include, but are not limited to, structural and nonstructural controls, treatment requirements, operation and maintenance procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and can be applied before, during, or after pollution-producing activities to reduce or eliminate the introduction of pollutants into LTBB waters.

4. "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to impacts from point and non-point sources of pollution: (a) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain/web appropriate to the waterbody under study, and (b) at appropriate frequencies and locations.

5. "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. §§ 1251 - 1387.

6. "Compliance schedule" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

7. "Conservation Enforcement Officer" means a Tribal Conservation or Law Enforcement officer authorized by Tribal law to enforce Tribal conservation regulations; or a federal enforcement agent, including a Special Agent of the U.S. Fish and Wildlife Service.

8. "Discharge," when used without qualification, means a discharge of pollutant(s).

9. "Discharge of pollutant(s)" means any addition of any pollutant to LTBB waters from any point source.

10. "Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant or other commercial facility.

11. "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

12. "Effluent limitation" means any restriction, requirement, or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources, and includes schedules of compliance.

13. "Floristic Quality Assessment" means a vegetation-based ecological assessment approach that is used for wetlands quality monitoring and assessment.

14. "Fundamentally different factors variance" means a variance from otherwise applicable technology-based effluent limitations under CWA § 301(b)(1)(A), (b)(2)(A) & (E), & 301(n).

15. "High quality wetlands" means those wetlands determined to have exceptional ecological resources by scientifically accepted methods, such as a Floristic Quality Assessment, or determined to be a closely connected resource to the Odawa culture.

16. "Hydric Soils" means soils that are formed under conditions of saturation, flooding, or ponding that develop an anaerobic condition after a period of time in the upper 40 inches (1meter) of the soil layer.

17. "Industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D Manufacturing," and such other classes of significant waste products as, by regulation, the Administrator deems appropriate.

18. "LTBB" means the Little Traverse Bay Bands of Odawa Indians.

19. "LTBB Waters" means all groundwater and surface waters that are within or border the Reservation. Surface waters include but are not limited to all or portions of rivers, streams, creeks (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands of all types, mudflats, sandflats, sloughs, prairie potholes, wet meadows, impoundments, riparian areas, springs, and all other bodies or accumulations of surface water, natural or artificial, public or private, including those dry during part of the year. Consistent with federal

requirements, the Program may exclude from LTBB waters certain waste treatment systems not constructed or located in what would otherwise be LTBB Waters.

20. "Load allocation" means the portion of a receiving water's loading capability that is attributed either to one of its existing or future non-point sources of pollution or to natural background sources.

21. "Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as the Program may prescribe by regulation.

22. "National Pollutant Discharge Elimination System" or "NPDES" means the regulatory program operated under CWA §§ 307, 318, 402, & 405 (including pretreatment and sludge management) or under Parts 3, 5, and 6 of this Act.

23. "National pretreatment standard" means any regulation promulgated by the Administrator in accordance with CWA § 307(b) & (c) that applies to industrial users, including prohibited discharges.

24. "New source" means any source (a building, structure, facility, or installation from which there is or may be a discharge of pollutants), the construction of which is commenced after publication by the Administrator of proposed regulations prescribing a standard of performance under CWA § 306 that will be applicable to such sources, if such a standard is thereafter promulgated in accordance with CWA § 306.

25. "New source performance standard" means a standard promulgated by the Administrator or the Program that is applicable to a category of new sources.

26. "Non-point source" means any source of water pollution that is not a point source, including airborne deposition of pollutants.

27. "Person" means any individual, partnership, association, or other entity; public or private corporation or other business entity, including a tribal entity or enterprise; federal,

tribal (including LTBB), state or local government or any agency or political subdivision thereof; or interstate or intertribal body or commission, and includes any officer or governing or managing body of any such entity.

28. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, rolling stock (except to the extent excluded from the NPDES program by section 601 of the National and Community Service Act of 1990, P.L. 101-610, 104 Stat. 3185), concentrated animal feeding operation ("CAFO"), or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges (except from CAFOs) or return flows from irrigated agriculture.

29. "Pollutant" means any type of contaminant discharged into water, including but not limited to toxic substances, hazardous substances, dredge spoil, garbage, solid waste, industrial, municipal, and agricultural waste, sewage and sewage sludge, manure, chemicals, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended), pesticides, herbicides, fungicides, rodenticides, fertilizers, incinerator residue, munitions, discarded equipment, rock, sand, soil, sediment, filter backwash, heat, and oil, regardless of whether in liquid, solid, or gaseous form. This term does not mean (A) "sewage from vessels" within the meaning of CWA § 312; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes, is approved by authority of the LTBB, and the LTBB determines that such injection or disposal will not result in the degradation of ground or surface water resources.

30. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the environment.

31. "Pretreatment program" means a program operated by the LTBB Natural Resources Department or by a publicly owned treatment works (whose program has been approved either by the Department or the Administrator) to implement national

pretreatment standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge.

32. "Program" means the LTBB Environmental Services Program, within the Natural Resources Department.

33. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the LTBB, its entities, or a state, municipality, or other tribe; this term does not include such a facility owned or operated by the United States or a federal agency.

34. "Reservation" means all lands (including submerged lands and banks of lands that may be dry for part of the year) and waters within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621; all lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491 in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation; and all lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior or are taken into trust for the Little Traverse Bay Bands of Odawa Indians, all notwithstanding the issuance of any patent and including rights-of-way running through such lands and waters, and notwithstanding the presence of manmade items like dams, piers, abandoned boom piers, abandoned logs, bridge supports, or other facilities, structures or objects that may exist on or in such lands and waters.

35. "Section 404 permit" means a permit issued by the U.S. Army Corps of Engineers under CWA § 404 or a permit issued by a tribe or state that is authorized by the U.S. Environmental Protection Agency to issue Section 404 permits.

36. "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

37. "Sewage sludge" means solid, semi-solid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solid removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

38. "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage.

39. "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for non-point sources and natural background.

40. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

41. "Treatment works" means any device, system, plant, disposal field, lagoon, dam, pumping station, incinerator, or other works subject to this Act used for the purpose of recycling, reclaiming, treating, stabilizing, or holding wastes.

42. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For the purposes of this definition, "domestic sewage" includes waste and waste water from humans or household

operations that are discharged to or otherwise enter a treatment works. The Program may designate any person subject to the standards for sewage sludge use and disposal established by the Administrator as a "treatment works treating domestic sewage."

43. "Underground injection" means the subsurface emplacement of fluids by well injection.

44. "Waste" means "pollutant," as that term is defined in this section.

45. "Wasteload allocation" or "WLA" means the portion of receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

46. "Wetlands" means land characterized by the presence of water at a frequency and duration sufficient to support, under natural conditions, aquatic vegetation and/or aquatic life, and which has hydric soils. This term includes, but is not limited to, swamps, marshes, bogs and fens, but does not include stormwater control features constructed to convey, treat, or store stormwater that are created on dry land.

SECTION IV. JURISDICTION

A. The provisions of this Act and of regulations promulgated under and orders, permits, and other requirements issued pursuant to this Act shall apply to all persons and all property within the jurisdiction of the LTBB, as defined in Article IV(B) of the Waganakising Odawa Constitution.

B. The provisions of this Act and of regulations promulgated under and citations, permits, and other requirements issued pursuant to this Act shall apply to any person, and to all property within the jurisdiction of the LTBB owned or operated by any such person who has submitted an application for and received a permit pursuant to this Act or has otherwise consented to be subject to the provisions of this Act.

SECTION V. AUTHORITIES AND DUTIES OF THE ENVIRONMENTAL SERVICES PROGRAM

A. General Authorities

1. Except as otherwise expressly provided in this Act, the Environmental Services Program shall be responsible for administering this Act.

2. In order to fulfill all obligations under this Act, the Program may:

a. encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution as necessary for the discharge of duties assigned under this Act;

b. hold hearings related to any aspect of or matters within the authorities of this Act and, in connection therewith, compel the attendance of witnesses and the production of records;

c. develop programs for the prevention, control, and abatement of new or existing pollution of LTBB Waters;

d. encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act, including voluntary testing of actual or suspected sources of surface water pollution;

e. secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

f. require, as specified in Section XLVIII of this Act, any person subject to the provisions of this Act to monitor, sample or perform other studies to quantify effects of pollutants and sewage sludge to the environment and to submit such plans, specifications, and other information deemed necessary by the Program to carry out the regulations adopted pursuant to this Act;

g. represent, consistent with the applicable requirements of tribal law and after appropriate consultation with appropriate authorities, LTBB in all matters pertaining to water pollution and its control, abatement, and prevention;

h. cooperate with federal and state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources; and

i. perform such other activities as may be necessary and appropriate to carry out this Act.

B. Regulations

1. The Program is authorized to promulgate such regulations as are necessary to carry out all functions under this Act, pursuant to the provisions of Section LII of this Act, including, but not limited to, regulations concerning: water quality standards and planning; discharges of pollutants into LTBB Waters; management and protection of wetlands; introduction of pollutants by industrial users; disposal of sewage sludge; construction of new control facilities or any parts of them; modification of existing control facilities or any parts of them; adoption of other remedial measures to prevent, control or abate water pollution; clean lakes; non-point sources; and watershed protection.

2. In promulgating regulations, the Program shall give consideration to, but shall not be limited to, the relevant factors prescribed by the Clean Water Act and the regulations thereunder, except that the regulations prescribed by the Program shall be at least as stringent as those promulgated under the Clean Water Act if there is an applicable minimum standard established therein. In promulgating regulations, the Program shall also give consideration to, but shall not be limited to, the relevant factors prescribed by tribal law.

3. All regulations promulgated under this Act shall be subject to review and approval by the Natural Resources Commission and the Tribal Council, the latter as provided in the LTBB Administrative Procedures Act, before becoming effective.

C. Duties

1. In order to fulfill all obligations under this Act, the Program shall:

   a. enforce regulations that have been promulgated by the Program and have become effective pursuant to the provisions of this Act and the LTBB Administrative Procedures Act; and

   b. compile and make available to the public from time to time reports, data and statistics with respect to matters studied or investigated by or at the direction of the Program.

SECTION VI. NO WAIVER OF SOVEREIGN IMMUNITY

The Little Traverse Bay Bands of Odawa Indians retain all rights of sovereign immunity. Nothing in this Act waives the sovereign immunity of LTBB except for the limited waiver provided for judicial review of final actions of the Program pursuant to Section LIII of this Act.

PART 2. LTBB WATER QUALITY STANDARDS AND PLANNING

Subpart A. Water Quality Standards

SECTION VII. WATER QUALITY STANDARDS

A. Promulgation of Standards

Water quality standards are one type of regulation authorized under this Act and are subject to the rulemaking requirements in Section LII. The Program shall promulgate water quality standards that protect the public health or welfare, enhance the quality of water and generally serve the purposes of this Act, including by implementing the anti-degradation policy set forth in Section II(A) of this Act. The standards shall provide for the protection and propagation of fish, wildlife and livestock and shall protect agricultural, domestic and recreational uses of water, as well as cultural and ceremonial values and uses of water. The standards shall consist of the designated uses for LTBB waters and the water quality criteria for such waters based upon such uses, an anti-degradation policy, and implementation methods, and shall be applicable to all LTBB Waters. The standards also shall include the methods and analyses to be used to determine compliance with such standards. The standards also may include provisions regarding compliance schedules, mixing zones, low flows, variances and such other matters as may be appropriate.

B. Designated Uses

The water quality standards shall establish designated uses for LTBB Waters, or segments thereof, taking into consideration the use and value of such waters for public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural (including livestock watering), commercial, industrial, and other purposes, and also taking into consideration their use and value for navigation and the cultural and ceremonial values and uses of the water. The Program may remove a designated use that is not an existing use consistent with the requirements of Section 303(c) of the Clean Water Act and associated federal regulations.

C. Criteria

The criteria established by the Program shall protect the designated uses, be based on sound scientific rationale (which may include criteria documents of the Administrator), and include sufficient parameters or constituents to protect the designated uses. For LTBB Waters with multiple uses, the criteria shall protect the most sensitive use. The Program may establish criteria specifically applicable to wildlife or sediment. The criteria shall include:

1. Narrative criteria to protect all LTBB Waters from: the discharge of toxics in toxic amounts; objectionable odors, tastes, color or turbidity in or on the water; detrimental effects on edible plant or animal life that reside in or on the water; bottom deposits; floating debris; and any other protections determined by the Program to be warranted under the goals of this Act.

2. Numerical criteria for pollutants or pollutant or other parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act), the discharge or presence of which in LTBB Waters the Program has determined could reasonably be expected to interfere with designated uses promulgated by the Program. The numerical criteria shall support such designated uses. In setting numerical criteria the Program may consider the effect of local conditions on water quality and may modify stream standards to reflect actual stream conditions when justified by sufficient data and need. When numerical criteria are not available and the Program determines it is appropriate to protect designated uses, the Program shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to CWA § 304(a)(8). Nothing in this section shall be construed to limit or delay

the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

3. Any other criteria the Program determines are necessary to protect the designated uses of LTBB Waters.

D. Methods Used

The Program, in specifying the methods and analyses to be used to determine compliance with LTBB water quality standards, may include chemical analyses, physical properties, biological monitoring and toxicity testing.

E. Compliance Schedules

The Program may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for a person subject to an NPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a water quality standard. The Program may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for any person subject to a mechanism, including a best management practice applicable to a non-point source, to comply with a new or more restrictive requirement which implements a water quality standard.

SECTION VIII. REVIEW OF WATER QUALITY STANDARDS

The Program shall from time to time (but at least once each three-year period beginning with the date of enactment of this Act) hold public hearings for the purpose of reviewing LTBB water quality standards and, as appropriate, revising and adopting standards. The results of such review shall be provided to the Administrator. Whenever the Program revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator.

SECTION IX. IMPLEMENTATION OF WATER QUALITY STANDARDS

The water quality standards promulgated under this Act are implemented through issuance of permits under Part 6 of this Act, mechanisms provided under Part 7 of this Act for non-point source discharges, mechanisms provided under Part 8 of this Act for the clean lakes program, certification of federal licenses and permits (including permits issued by the U.S. Army Corps of Engineers pursuant to CWA § 404), as provided in Section XV of this Act, and participation as an affected tribe for discharges that may affect LTBB Waters (under CWA § 401(a)(2)). They also shall serve as clean-up standards for contaminated sites addressed under tribal or federal law.

Subpart B. Water Quality Planning and Management

SECTION X. COORDINATED WATER QUALITY PLANNING AND MANAGEMENT

The Program may conduct water quality planning and management activities within the Reservation in a coordinated fashion. Any such coordination shall be conducted consistent with this Act and the regulations promulgated hereunder and with applicable minimum federal requirements and may include, but is not limited to, identification of waters under Section XI of this Act, development of total maximum daily loads and wasteload allocations/load allocations under Section XII of this Act, and development of water quality monitoring, management plans and reports under Section XIII of this Act.

SECTION XI. IDENTIFICATION OF WATERS

A. Implementation

The Little Traverse Bay Bands of Odawa Indians is committed to identifying waters for which effluent limitations or controls on thermal discharges are not stringent enough to implement applicable water quality standards. The Program shall develop regulations to implement this section and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this section.

B. Effluent limitations

The Program shall identify those LTBB Waters for which the effluent limitations required by CWA § 301(b)(1)(A) & (B) are not stringent enough to implement a water quality standard applicable to such waters. The Program shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

C. Thermal discharges

The Program shall identify those LTBB Waters for which controls on thermal discharges under CWA § 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of fish and wildlife.

D. Approval by Administrator

The Program shall submit to the Administrator from time to time for approval the identifications made under this section. If the Administrator approves any such identification, the Program shall incorporate it into the current plan under Section XIV of this Act. If the Administrator disapproves such identification and he or she identifies certain LTBB Waters for which the effluent limitations and controls on thermal discharges are not stringent enough to implement the water quality standards applicable to such waters, the Program shall incorporate this identification into the Program's current plan under Section XIV of this Act. These actions shall be taken in parallel with actions under Subsection XII(E) of this Act.

SECTION XII. TOTAL MAXIMUM DAILY LOADS AND WASTELOAD ALLOCATIONS/LOAD ALLOCATIONS

A. Implementation

The Little Traverse Bay Bands of Odawa Indians is committed to establishing total maximum daily loads for waters identified under Section XI. The Program shall develop regulations to implement this section and submit them to the Natural Resources Commission and the Tribal

Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this section.

B. Total maximum daily load

The Program shall establish for the waters identified under Subsection XI(B) of this Act, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under CWA § 304(a)(2) as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

C. Total maximum daily thermal load

The Program shall estimate for the waters identified in Subsection XI(C)) of this Act the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

D. Approval by Administrator

The Program shall submit to the Administrator from time to time for approval the loads established under this section. If the Administrator approves such loads, the Program shall incorporate them into the current plan under Section XIV of this Act. If the Administrator disapproves such loads and himself establishes loads to implement the water quality standards applicable to such waters, upon such establishment the Program shall incorporate such loads into the Program's current plan under Section XIV of this Act. These actions shall be taken in parallel with actions under Subsection XI(D) of this Act.

E. Additional identification

For the specific purpose of developing information, the Program shall identify all LTBB Waters that were not identified under Subsections XI(B) & (C) of this Act and estimate for such waters the total maximum daily load with seasonal variations and margins of safety for those pollutants which the Administrator identifies under CWA § 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish and wildlife.

SECTION XIII. WATER QUALITY MONITORING, MANAGEMENT PLANS AND REPORTS

A. Monitoring

The Program shall establish and provide for the operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of LTBB Waters, including biological monitoring, and provide for periodic updating of such data and the submission of such data to the Administrator. The Program may provide for such monitoring through water quality management plans and through regulations promulgated pursuant to the rulemaking procedures in Section LII of this Act.

B. Management Plans

The Program may develop water quality management plans consistent with the requirements of CWA §§ 205(j), 208 and 303 and submit those plans to the Administrator; the Program may also periodically update those plans.

C. Reports

The Program may prepare water quality reports consistent with the requirements of CWA § 305(b) and submit those reports to the Administrator; the Program may also periodically update those reports.

SECTION XIV. CONTINUING PLANNING PROCESS

A. Plan

The Program shall submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved) a proposed continuing planning process which is consistent with this Act and the Clean Water Act. The Program shall from time to time review the LTBB's approved planning process for the purpose of ensuring that such planning process is at all times consistent with this Act and the Clean Water Act.

B. Elements of Plan

The continuing planning process shall include, but not be limited to, the following:

1. Effluent limitations and schedules of compliance at least as stringent as those required by Sections XIX and XX of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this Act and the Clean Water Act;

2. All elements of any applicable area-wide waste management plans or applicable basin plans, established under CWA §§ 208 and 209, for which the LTBB has jurisdiction;

3. Total maximum daily load for pollutants in accordance with Section XII of this Act;

4. Procedures for revision;

5. Adequate authority for intergovernmental cooperation;

6. Adequate implementation, including schedules of compliance, for revised or new water quality standards, under Subpart A of this Part;

7. Controls over the disposition of all residual waste from any water treatment processing;

8. An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of Section XIX of this Act.

Subpart C. Certification of Compliance

SECTION XV. CERTIFICATION OF COMPLIANCE WITH FEDERAL WATER POLLUTION CONTROL REQUIREMENTS

A. Certification of compliance

The Program may grant or deny certification that an applicant requesting federal license or permit necessary to conduct any activity, (including but not limited to the construction or operation of facilities), which may result in a discharge into LTBB Waters, must satisfactorily show that he or she will comply with CWA §§ 301, 302, 303, 306 & 307. If there is no applicable effluent limitation or other limitation under CWA §§ 301(b) & 302, and there is no applicable standard under CWA §§ 306 & 307, for the activity in question, the Program shall so certify. The Program shall submit the application and any certification issued under this section to the Administrator, pursuant to CWA § 401.

B. Rules for grant or denial of certification

The Program shall promulgate regulations, consistent with the rulemaking provisions of Section LII of this Act, establishing the procedures that the Program will follow in granting or denying certifications under this section. Such rules shall require public notice of an application for certification, opportunity for public participation in the decision-making process on an application for certification, and opportunity and procedures for public hearings on applications for certification. Such rules also shall require an applicant to provide the Program with notice of proposed changes in the construction or operation of the facility or other activity in question and with plans for the operation of the facility or conduct of the activity in question. Such rules may

also include fees to be charged by the Program for the review of applications and issuance of certifications.

C. Limitations and monitoring requirements

In any certification issued under this section, the Program shall set forth effluent limitations, other limitations and monitoring requirements necessary to ensure that the applicant will comply with applicable effluent and other limitations under CWA § 301 or 302, standards of performance under CWA § 306, prohibitions, effluent standards or pretreatment standards under CWA § 307, and any other appropriate requirement of tribal law. These limitations and requirements shall become conditions on any permit subject to the provisions of CWA § 401.

PART 3. SURFACE WATER DISCHARGE AND PRETREATMENT REQUIREMENTS

SECTION XVI. IMPLEMENTATION.

The Little Traverse Bay Bands of Odawa Indians is committed to developing surface water discharge and pretreatment requirements. The Program shall develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. Subsection XVIII(A) ("Prohibitions") shall be in full force and effect immediately upon adoption of this Act.

SECTION XVII. REGULATIONS REQUIRED

Any regulations developed for surface water discharges and pretreatment requirements shall meet the minimum criteria as set forth in this Part.

Subpart A. Surface Water Discharges

SECTION XVIII. PERMIT REQUIRED TO DISCHARGE INTO SURFACE WATER

A. Prohibitions

1. Except as provided in this Act or regulations promulgated hereunder, it is unlawful for any person to discharge a pollutant from a point source into LTBB Waters without a valid permit or to violate any term or condition of such permit. Any such action is a public nuisance, as well as being subject to enforcement under Part 10 of this Act.

2. A valid permit is one issued consistent with rules promulgated pursuant to this part and Part 6 of this Act or, if no such permit program has been established, by the Administrator under CWA § 402, for which the term has not expired.

3. It is unlawful for any person, without first securing a permit, to construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, the operation of which could likely result in a discharge due to runoff, flow or usage.

B. Exemptions

The following discharges do not require NPDES permits:

1. Discharges into LTBB Waters of dredged or fill materials that are regulated under CWA § 404.

2. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300.

C. Grounds for issuance of permit

The Program may, after notice and opportunity for public hearing, issue a permit for the discharge of any waste, pollutant or combination of pollutants into LTBB Waters, for a period not to exceed five years, upon condition that such discharge meets or will meet, subject to authorized schedules of compliance, all applicable LTBB, affected tribe or state, and federal

water quality standards and effluent standards and all other requirements of this Act and regulations promulgated under this Act.

D. Grounds for denial of permit

The Program shall deny a permit where:

1. The permit would authorize a discharge that would not meet the requirements specified in subsection C of this section;

2. The permit would authorize the discharge of any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into LTBB Waters;

3. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any LTBB Waters;

4. The permit is objected to in writing by the Administrator pursuant to any right to object provided to the Administrator by CWA § 402(d);

5. The permit would authorize a discharge from a point source which is in conflict with a plan developed under Section XIV of this Act and approved by the Administrator under CWA § 208(b), and for which the submitting government entity had jurisdiction;

6. The issuance of the permit would otherwise be inconsistent with the applicable requirements of other LTBB statutes or regulations; or

7. The issuance of the permit would otherwise be inconsistent with applicable requirements of the Clean Water Act or regulations promulgated thereunder.

E. General Permit

The Program may issue a general permit within a geographical area to cover (1) storm water point sources, (2) a category of point sources, or (3) a category of treatment works treating domestic sewage. A facility covered by a general permit shall be subject to all provisions of this Act and regulations promulgated hereunder, except as otherwise provided by the Program by regulation in the case of certain application requirements.

SECTION XIX. EFFLUENT LIMITATIONS ENFORCED IN ISSUANCE OF PERMITS

A. Permit Conditions

The Program shall require as permit terms, limitations and conditions the achievement of:

1. Effluent limitations based upon the application of such levels of treatment, technology and processes as are required under the Clean Water Act for which the Administrator has promulgated regulations under CWA §§ 301, 304, 306 & 318 for industrial or municipal dischargers and aquaculture projects;

2. Effluent limitations, best management practices, requirements for cooling water intake structures, alternative limitations for coal re-mining under CWA § 301(p), and a determination of maximum extent practicable, based upon the application of best professional judgment, in the absence of formally promulgated standards and limitations by the Administrator under the Clean Water Act, based upon the appropriate criteria contained in CWA §§ 301, 304(e), 316(b) & 402(a)(1)(B);

3. Toxic pollutant effluent standards or prohibitions promulgated by the Administrator under CWA § 307(a), currently contained in 40 C.F.R. Part 129, within the time frame for compliance provided by the Administrator, as well as the authority to modify existing permits to require compliance with such toxic pollutant effluent standards;

4. Effluent limitations, standards, or prohibitions on discharges from publicly owned treatment works and requirements of a pretreatment program based upon the requirements of CWA § 307 and the Administrator's implementing regulations;

5. For those treatment works treating domestic sewage and required to obtain a permit under Section XVIII of this Act, appropriate conditions that are required in order to comply with regulations for sludge use and disposal promulgated by the Administrator under CWA § 405;

6. Any more stringent effluent limitations necessary to meet water quality standards established pursuant to any LTBB, affected state or tribe, or federal law or regulation, including water quality-related effluent limitations established by the Administrator under CWA § 302; and

7. Any more stringent effluent limitations necessary to comply with the continuing planning process approved by the Administrator under CWA § 303(e).

B. Time for Compliance

Effluent limitations prescribed under this section shall be achieved in the shortest reasonable period consistent with LTBB law and the Clean Water Act, and with any regulations or guidelines promulgated or issued thereunder.

C. Variances

1. The Program may grant or deny requests for variances from effluent limitations proposed for the control of thermal pollution, based on the criteria specified in CWA § 316(a). The Program may implement any alternative limitations, terms or conditions established in a final decision on such a variance request.

2. The Program may deny, forward to the Administrator with a written concurrence, or submit to the Administrator without a recommendation, completed requests for variances under CWA § 301(c), (g), or (n) (including fundamentally different factors variance requests from best practicable control technology currently available effluent limitations guidelines) or 302(b)(2). To the extent that the Program has forwarded a request to the Administrator with a written concurrence or without a recommendation, the

Program may implement any alternative limitations, terms or conditions established by the Administrator in a final decision on such a variance request.

SECTION XX. COMPLIANCE SCHEDULES

The Program may set and revise compliance schedules and include such schedules within the terms and conditions of permits for discharge of wastes or pollutants or for sludge use and disposal, consistent with LTBB law, the Clean Water Act and implementing regulations. The Program may establish interim compliance schedules in such permits which are enforceable without showing a violation of an effluent limitation or harm to water quality.

SECTION XXI. EXTENSION OF TIME TO MEET WATER QUALITY AND EFFLUENT STANDARDS

A. Required Findings

The Program may issue a reasonable extension to a point source discharger, industrial user, or treatment works treating domestic sewage, which extension shall not conflict with the Clean Water Act, in which to meet water quality standards or other applicable effluent limitations or standards of the LTBB or an affected state or tribe (to the extent allowable under the state or tribal law or regulations), if the Program determines that:

1. The violation was the result of actions or conditions outside the control of the discharger;

2. The discharger, industrial user, or treatment works treating domestic sewage has acted in good faith;

3. The extension would not result in the imposition of any additional controls on any point or non-point source; and

4. Facilities necessary for compliance are under construction and will be completed at the earliest date possible.

B. No Excuse of Noncompliance

Any extension of time granted under this section will not compromise any right for enforcement available under Part 10 which exists before the extension is granted.

SECTION XXII. RECORDING, REPORTING, AND INSPECTION CONDITIONS

The Program may prescribe terms and conditions for permits or other controls on industrial users to assure compliance with applicable LTBB, affected state or tribe, and federal effluent standards and water quality standards (as set forth in Section XIX of this Act), including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection (as provided in Section XLVIII of this Act).

SECTION XXIII. DISPOSAL OF POLLUTANTS INTO WELLS

The disposal of pollutants into wells shall be prohibited, unless the disposal is authorized by the federal underground injection control ("UIC") program authorized under the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, or by any LTBB UIC program approved by the Administrator. The Program shall regulate any such discharges that are subject to the NPDES program through NPDES permits that incorporate appropriate federal or LTBB UIC requirements.

Subpart B. Pretreatment Requirements

SECTION XXIV. PRETREATMENT STANDARDS

The Program may promulgate rules specifying pretreatment standards to be applied to all industrial users of publicly owned treatment works for the introduction of pollutants into publicly

owned treatment works, including pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works. Such standards shall not conflict with any pretreatment standard established under CWA § 307(b).

SECTION XXV. CONDITIONS IN PERMITS ISSUED FOR POTWS

A. Compliance with Clean Water Act

The Program or the owner or operator of a publicly owned treatment works ("POTWs"), if it has an approved pretreatment program, shall implement all provisions of CWA § 307, including issuing pretreatment industrial user permits or controlling discharges from significant industrial users by other appropriate means, such as discharge fees.

B. Other conditions

The Program shall include the following requirements as conditions in permits for the discharge of pollutants from POTWs:

1. The identification, in terms of character and volume of pollutants, of any significant source introducing into such POTWs pollutants subject to pretreatment standards under CWA § 307(b);

2. A program to assure compliance by each such source with pretreatment standards promulgated under CWA § 307(b) and Section XXIV of this Act;

3. Adequate notice to the Program of:
   a. New introductions into POTWs of pollutants from any source which would be a new source as defined in CWA § 306 if such source were discharging pollutants;
   b. New introductions of pollutants into POTWs from a source which would be subject to CWA § 301 if it were discharging such pollutants; or

c. A substantial change in volume or character of pollutants being introduced into POTWs by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such POTWs and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTWs;

4. Compliance with any system of user charges required under LTBB law or the Clean Water Act or regulations promulgated thereunder; and

5. Compliance with recordkeeping, reporting, sampling, monitoring and inspection requirements under CWA § 308 and Section XLVIII of this Act.

SECTION XXVI. OTHER AUTHORITY OF PROGRAM REGARDING POTWS

In addition to other provisions specifically authorized in this Act, the Program shall have, but not be limited to, the following authority regarding POTWs:

1. Issue decisions on requests by POTWs for pretreatment program approval;

2. Act on requests for removal credits under CWA § 307(b);

3. Act on categorical determination requests;

4. Deny or make recommendations on requests for fundamentally different factors variances under CWA § 301(n);

5. Make decisions on compliance deadline extension requests based on innovative technology under CWA § 307(e); and

6. Join a POTW as a defendant in an enforcement action under this Act against an industrial user.

PART 4. PROTECTION AND MANAGEMENT OF WETLANDS

SECTION XXVII. WETLANDS PROTECTION PROGRAM

A. Establishment of Wetlands Protection Program and Effective Date

The Little Traverse Bay Bands of Odawa Indians is committed to establishing a Wetlands Protection Program to monitor, assess and protect wetlands to ensure that their ecological services are maintained; to designate and protect High Quality Wetlands for Tribal uses; and to establish a permitting process for discharge of dredged or fill material into a wetlands or other alteration or modification of an existing wetlands. This Act shall repeal and replace Waganakising Odawak Statute (WOS) 2006-016 and any previous wetlands statute. The Program shall develop regulations to implement this Part, including wetlands permit regulations, and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. Notwithstanding the preceding sentence, the Wetlands Protection Program shall be effective immediately upon adoption of this Act on lands held in trust for LTBB by the Secretary of Interior.

B. Authorities and Duties of Program

The Program shall have the following authorities and duties under this Part:

1. Enforce regulations promulgated pursuant to this Act;

2. Issue wetlands permits and require monitoring of wetlands activities;

3. Serve as a liaison between Tribal, Federal, County, State and local units of government on wetlands protection issues;

4. Review and comment on CWA § 404 permits issued by U.S. Army Corps of Engineers or Part 303 permits issued by Michigan Department of Environmental Quality pursuant to the Michigan Natural Resources and Environmental Protection Act;

5. Encourage education and proper uses of wetlands to reduce over-harvesting of natural and cultural resources.

6. Coordinate with and support Tribal, State and Federal entities in the enforcement of any applicable Tribal, State, or Federal statutes, ordinances or regulations involving wetlands protection and enhancement.

7. Establish standards and procedures for monitoring permitted activities.

8. Issue citations for violations of this Act and recommend a schedule of fines that may be imposed by the Tribal Court.

SECTION XXVIII. APPLICABILITY

A. This Part applies to wetlands that meet any one of the following criteria:

1. Connected to one of the Great Lakes.

2. Located within 1,000 feet of one of the Great Lakes.

3. Connected to an inland lake, pond, river, or stream.

4. Located within 500 feet of an inland lake, pond, river or stream.

5. Not connected to one of the Great Lakes, or an inland lake, pond, stream, or river, but more than 5 acres in size, regardless of the size of the impacted area.

6. Classified as a High Quality Wetlands, regardless of the size of the impacted area.

7. At least 1/3 acre in size and within lands held in trust for LTBB by the Secretary of Interior, regardless of the size of the impacted area.

B. This Part does not apply to manmade structures designed for drainage or stormwater management. Consistent with federal requirements, the Program may exclude from LTBB waters certain waste treatment systems not constructed or located in what would otherwise be LTBB waters.

SECTION XXIX. WETLANDS VERIFICATION

The Environmental Services Program and Geographic Information System, along with any other departments or staff assigned by the Tribal Administrator, shall maintain a composite wetlands map and inventory of all wetlands to which this Act applies using United States Department of Agricultural Soil surveys; Wetlands Criteria as established by the Army Corps of Engineers; field inspections; topographical maps; aerial photography; and other similar resources. The inventory and map shall include and indicate the location of all High Quality Wetlands.

SECTION XXX. PERMIT REQUIREMENT

A. Wetland Modification

Anyone who wishes to alter or modify an existing wetlands covered by this Part, including but not limited to undertaking any activity involving the discharge of dredged or fill material into a wetlands, is required to apply for a permit pursuant to regulations promulgated under this Part, consistent with the rulemaking requirements in Section LII.

B. Delineation Requirement

Any applicant proposing activity within a wetlands covered by this Part must perform a wetland delineation. The delineation of wetlands shall be done in accordance with the Wetland Criteria as established by the United States Army Corps of Engineers. The delineation shall be a component of all Permit applications and shall be verified by the Environmental Services Program prior to permit approval.

SECTION XXXI. WETLANDS MITIGATION

A. Mitigation

The Program can consider wetland mitigation as a condition of permit approval, such as the types of actions described in Subsection (B) of this section, only if all of the following conditions are met:

1. The wetlands impacts are otherwise eligible for permits pursuant to regulations promulgated under this Part.

2. No feasible and prudent alternative is available to avoid impacts on the wetlands.

3. An applicant has used all practical means to minimize the impact to the wetlands. This may include the permanent protection of wetlands on the site that are not directly impacted by the proposed activity.

B. Mitigation Determinations

The Program shall take into consideration the following when making wetlands mitigation determinations:

1. The ability to create or restore wetlands of equal or greater in size and of equal or greater quality.

2. The ability to create or restore other wetlands contiguous to existing wetlands.

3. The ability to create or restore High Quality Wetlands.

4. The ability to create or restore other wetlands within the same United States Geological Survey Hydrologic Unit Code watershed (12-digit or greater) as the permitted activity.

5. Whether the wetlands mitigation project provides the same level of access to the area as was previously enjoyed by the public or Tribal Citizens.

PART 5. SEWAGE SLUDGE

SECTION XXXII. REGULATION OF THE USE AND DISPOSAL OF SEWAGE SLUDGE

A. Establishment of Program

The Little Traverse Bay Bands of Odawa Indians is committed to establishing a program to regulate the use and disposal of sewage sludge. The Program shall develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part.

B. Content of Regulations

In establishing a sewage sludge program, the Program shall:

1. Regulate all sludge use and disposal methods within the Reservation;

2. Regulate the transportation and storage of sewage sludge in the Reservation;

3. Ensure compliance with applicable sludge standards by all users or disposers of sewage sludge; and

4. Regulate the issuance of permits under Sections XVIII & XXXIV of this Act for the disposal of sewage sludge, which regulations shall require the application to sewage sludge disposal of each criterion, factor, procedure and requirement applicable to a permit issued under Section XVIII of this Act.

SECTION XXXIV. PERMITS

A. Permit requirement

In any case where the disposal of sewage sludge resulting from the operation of a treatment works (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering LTBB Waters, such disposal is prohibited except in accordance with a permit issued under Section XVIII of this Act or, if no such permit program has been established, by the Administrator under CWA § 402.

B. Consistency with sewage sludge regulations

Any permit issued under Section XVIII to a POTW or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations promulgated pursuant to Section XXXIII of this Act.

C. Applicability to all treatment works

In the case of a POTW or other treatment works treating domestic sewage that is not subject to Section XVIII of this Act, the Program may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to Section XXXIII of this Act. The Program shall establish procedures for issuing permits pursuant to this subsection.

SECTION XXXV. RECORDKEEPING, REPORTING, AND INSPECTIONS

Any treatment works treating domestic sewage is subject to applicable provisions of regulations issued by the Program regarding recordkeeping, reporting and inspections, including provisions of Section XLVIII of this Act. The Program may prescribe terms and conditions for permits issued under this Part to assure compliance with applicable LTBB and federal effluent, solid waste, and water quality standards, including requirements concerning recordkeeping, reporting, monitoring, entry and inspection, to the extent provided under this Act. The Program may

establish regulations specifically establishing terms, limitations and conditions, including notification requirements, applicable to septage haulers.

PART 6. PERMIT PROCEDURES

SECTION XXXVI. IMPLEMENTATION

The Little Traverse Bay Bands of Odawa Indians is committed to developing requirements for issuance of permits under this Act. The Program shall promulgate regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part.

SECTION XXXVII. CONDITIONS OF PERMITS

A. Submission of information

The Program may, by issuing regulations and on a case-by-case basis, prescribe conditions for and require the submission of plans, specifications, and other information from a permittee, applicant, or person discharging without a permit, in connection with applications for or otherwise related to the issuance of permits, introduction of pollutants by an industrial user into a publicly owned treatment works, or activities of a treatment works treating domestic sewage.

B. Consent to jurisdiction

All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the Program for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

"Applicant hereby consents to the jurisdiction of the Little Traverse Bay Bands of Odawa Indians in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the LTBB Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant."

The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Reservation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application." Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, may result in denial of the permit and subject the applicant to civil penalty in accordance with this Act.

SECTION XXXVIII. TERM OF PERMITS

A. Fixed term

Each permit shall have a fixed term not exceeding five years. Upon expiration of a permit, a new permit may be issued by the Program after notice and opportunity for public hearing and upon condition that the discharge or disposal (including of sludge) meets or will meet, subject to authorized compliance schedules, all applicable requirements of this Act, including the conditions of any permit issued by the Program.

B. Renewals

When the permittee has made a timely and sufficient application for a renewal in accordance with rules promulgated under this Act, an existing permit for an activity of a continuing nature shall not expire until the application for renewal has been finally determined by the Program.

SECTION XXXIX. NOTICE OF ACTIONS

The Program shall issue and implement rules to ensure:

1. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive notice of each application for a permit; be provided an opportunity for public hearing and comment before ruling on each such application; and be provided an explanation in writing of the reasons why any recommendations submitted with regard to such application were not adopted;

2. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive appropriate notice of activities of the pretreatment program, when applicable, and be provided an opportunity for public hearing and comment before the Program rules on such activities, as provided by CWA § 307 and the Administrator's implementing regulations; and

3. That the Administrator receives notice and a copy of each application for a permit.

SECTION XL. ISSUANCE, REVOCATION, OR DENIAL OF PERMITS

A. Authority

The Program shall issue, suspend, revoke, modify, or deny permits consistent with provisions of this Part and with rules issued by the Program consistent with the provisions of this Act.

B. Grounds for revocation, modification or suspension

Any permit issued under this Part may be revoked, modified, or suspended in whole or in part, during its term or upon request of the permit-holder or any interested person, for cause, including but not limited to the following:

1. Violation of any condition of the permit;

2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

3. Change in condition that requires either a temporary or permanent reduction or elimination of the permitted discharge or disposal operation, where "condition" does not include statutory or regulatory effluent limitations or standards enacted or adopted during the permit term, other than for toxic pollutants.

C. Notice and hearing

The Program, applicant, permittee or any interested person may request that the Program hold a public hearing on a permit decision. If requested, or if required by the Program, a public hearing shall be held within 30 calendar days after receipt of written request or written notice issued by the Program, or as soon thereafter as reasonably practical.

D. Environmental Appeals Board Review

If the Program recommends issuance or denial of an application for a permit, or revokes, suspends, or modifies a permit, the Program shall give written notice of its decision to the applicant or permittee, any interested person who has requested to be notified, and other entities as provided by this Act. The applicant, permittee or any interested person may appeal the Program's permit decision to the Environmental Appeals Board within 30 days of issuance of the decision. The EAB may affirm, modify or reverse the decision of the Program based upon the evidence presented at the hearing. Failure to appeal to the EAB will preclude judicial review of the permitting decision by the Tribal Court.

E. Effective date

Issuance, modification, revocation, or suspension of a permit shall be effective 30 calendar days after issuance of the Program's decision, unless a later date is specified. If the permit decision is appealed to the EAB, an order of modification, revocation or suspension shall be effective 60 calendar days after the issuance of the EAB's decision.

F. Any additional duties and/or responsibilities of the EAB shall be delineated by statute.

SECTION XLI. CONFLICT OF INTEREST

A. No Program employee shall participate in a permit action that involves himself or herself, any discharger, industrial user or treatment works treating domestic sewage with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

B. To the extent not prohibited by Subsection (A) of this section, no employee of the Program shall participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, except to the extent otherwise allowed under LTBB law. In no case shall a Program employee participate as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage in any proceeding that was instituted or ongoing during the employee's tenure with the Program.

SECTION XLII. FUNDING OF PERMIT PROGRAM

The Program may, by rulemaking pursuant to Section LII, charge fees for permit applications, renewals, and other permitting actions. Such fees shall be designed to cover administrative costs of implementing the permit program. The Little Traverse Bay Bands of Odawa Indians recognizes the importance of the permit program in implementing and enforcing the LTBB Water Quality Standards and, when funding programs under this Act, the Tribal Council will

consider revenues collected by the Program through fees, penalties, and other sources, when making budgetary decisions.

PART 7. NON-POINT SOURCE MANAGEMENT PROGRAM

SECTION XLIII. NON-POINT SOURCE ASSESSMENT REPORT

A. Content of report

The Program shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved), a report which:

1. Identifies those LTBB Waters which, without additional action to control non-point sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act or the Clean Water Act;

2. Identifies those categories and subcategories of non-point sources or, where appropriate, particular non-point sources which add significant pollution to each portion of the LTBB Waters identified under Paragraph (A)(1) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

3. Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of non-point sources and, where appropriate, particular non-point sources identified under Paragraph (A)(2) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

4. Identifies and describes LTBB and local programs for controlling pollution added from non-point sources to, and improving the quality of, each such portion of LTBB

Waters, including but not limited to those programs which are receiving federal assistance under CWA § 319(h) & (i).

B. Basis for report

In preparing the report required by this section, the Program may use all available information and applicable U.S. EPA guidance.

SECTION XLIV. NON-POINT SOURCE MANAGEMENT PROGRAM

A. Program submission

The Program shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program for controlling pollution added from non-point sources to LTBB Waters and improving the quality of such waters, which program the LTBB proposes to implement in the first four fiscal years beginning after the date of submission of the program. The Program may periodically revise the submission.

B. Program Contents

The management program proposed for implementation under this section shall address applicable guidance published by U.S. EPA and include the following:

1. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular non-point source designated under Section XLIII(A)(2) of this Act, taking into account the impact of the practice on groundwater quality.

2. An identification of programs within the LTBB and affected tribes and states (including, as appropriate, non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) designed to achieve implementation of the best management

practices by the categories, subcategories, and particular non-point sources designated under Paragraph (B)(1) of this section.

3. A schedule containing annual milestones for (a) utilization of the program implementation methods identified in Paragraph (B)(2) of this section, and (b) implementation of the best management practices identified in Paragraph (B)(1) of this section by the categories, subcategories, or particular non-point sources designated under Section XLIII(A)(2) of this Act. Such schedule shall provide for utilization of the best management practices at the earliest practicable date, but no later than the time period provided in Section VII(E) of this Act.

4. Any other information required by CWA § 319(b) and regulations and guidance promulgated thereunder.

C. Utilization of Local and Private Experts

In developing and implementing a management program under this section, the Program shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of non-point sources of pollution.

D. Development on Watershed Basis

The Program shall, to the maximum extent practicable, develop and implement a management program under this Part on a watershed-by-watershed basis within the Reservation.

PART 8. CLEAN LAKES PROGRAM

SECTION XLV. BIENNIAL REPORT

A. The Program may initiate a Clean Lakes program under this Part. If the Program decides to develop a Clean Lakes program, the Program shall prepare and submit to the Administrator for approval a report containing the following information:

1. an identification and classification according to eutrophic condition of all lakes or portions of lakes within or adjacent to the Reservation;

2. a description of procedures, processes and methods (including land use requirements) to control sources of pollution of such lakes;

3. a description of methods and procedures, in conjunction with appropriate federal agencies, to restore the water quality of such lakes;

4. methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of such lakes and methods of removing from such lakes toxic metals and other toxic substances mobilized by high acidity;

5. a list and description of such lakes which are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

6. an assessment of the status and trends of water quality in such lakes, including but not limited to the nature and extent of pollution loading from point and non-point sources and the extent to which the use of such lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

B. This report shall be updated and submitted to the Administrator every two years, for so long as the Program continues to operate a Clean Lakes program. Any Clean Lakes program developed under this Part shall be carried out in such a way that would not impede or interfere with the Great Lakes Protection Statute, Tribal Code Sections 4.601-4.606.

SECTION XLVI. CONTRACTS AND INTERAGENCY AGREEMENTS

The Program is authorized to enter into agreements with other public agencies and to contract with public and private agencies, organizations and individuals to develop and demonstrate new or improved methods for the prevention, removal, reduction and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation.

PART 9. WATERSHED PROTECTION PROGRAM

SECTION XLVII. DEVELOPMENT OF PROGRAM

The Little Traverse Bay Bands of Odawa Indians is committed to developing a Watershed Protection program to protect surface and groundwater from pollution. The Environmental Services Program may conduct studies regarding watershed protection within the Reservation, develop guidelines and procedures to protect such watersheds, and develop regulations to implement this Part and submit them to the Natural Resources Commission and the Tribal Council for approval, pursuant to the rulemaking requirements in Section LII, provided that resources are available for implementation of this Part. The Program may develop the Watershed Protection Program on a watershed basis, taking into account impacts on water quality from a variety of sources and considering cumulative impacts as well as discrete instances of contamination. In developing the Watershed Protection program, the Program shall consult with other LTBB agencies and departments and with state and federal agencies and other entities having authority over activities which may impact water quality within the Reservation (such as agriculture, livestock grazing, fisheries, mining and timber operations and business development).

PART 10. ENFORCEMENT

SECTION XLVIII. RECORDS, INSPECTIONS, MONITORING AND ENTRY

A. Recordkeeping, reporting and monitoring

In order to carry out the purposes of this Act, including but not limited to developing or enforcing any water quality standard, water quality management plan, continuing planning

process or best management practice under this Act, issuing certifications, granting approvals, and issuing permits or otherwise regulating point sources, treatment works and industrial users of POTWs under this Act, the Program may require, as appropriate, any person subject to the requirements of this Act to:

1. Establish and maintain records;

2. Prepare and submit reports;

3. Install, calibrate, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring;

4. Sample effluents and receiving waters (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Program shall prescribe); and

5. Provide such other information as the Program may reasonably require.

B. Entry and inspections

The Program or its authorized representative (including an authorized contractor acting as a representative of the Program), upon presentation of his/her credentials,

1. Shall have a right of entry to, upon, or through any premises necessary to implement and enforce the provisions of this Act and the regulations promulgated hereunder, and

2. Shall have access to and the right to copy any records, inspect any monitoring or sampling equipment or method under Subsection (A) above, inspect any treatment processes or equipment, sample any effluents which are being discharged into LTBB Waters or are required to be or are sampled under Subsection (A), and perform any other inspection necessary to ensure compliance with this Act and the regulations promulgated hereunder. Such access and inspections shall be conducted at reasonable times, with or without notice, and shall be completed with reasonable promptness. Such access and

inspections may be made at any time if the Program determines there is a threat of endangerment to the environment or public health.

Any records, reports or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment or new source performance standards.

C. Availability of information to public

1. Trade secrets. Any records, reports or other information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Program by any person that records, reports or other information or any particular part thereof (other than effluent data) to which the Program has access under this section would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Program shall consider such record, report or other information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the LTBB and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. The Program shall deny claims of confidentiality for the name and address of any permit applicant or permittee; copies of permit applications and permits; inspection reports, and effluent data.

2. Culturally sensitive information. Any information as to the location of LTBB waters used for traditional cultural practices, or other culturally sensitive information that LTBB or LTBB elders withhold from the general public for traditional or cultural reasons, shall be protected by the Program and shall not be made available to the public under any conditions, except that such information may be disclosed to other officers, employees or authorized representatives of the LTBB and of the United States concerned with carrying out this Act or when relevant to a proceeding under this Act, provided that such information continues to be protected from public disclosure.

D. Confidential information

Any authorized representative of the Program (including an authorized contractor acting as a representative of the Program) who discloses confidential information, as defined in Paragraphs (C)(1) & (2) of this section or in other applicable tribal or federal statutes and regulations, including the LTBB Public Documents Statute and Regulations, in a manner contrary to those provisions and laws, may be subject to dismissal, suspension, or other adverse personnel action. Any authorized representative of the Program (including an authorized contractor acting as a representative of the Program) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that is required to be considered confidential under this subsection and subsection (C) or is otherwise exempt from public disclosure under applicable tribal or federal law shall be fined not more than $500. Nothing in this subsection shall prohibit the Program or an authorized representative of the Program (including any authorized contractor acting as a representative of the Program) from disclosing records, reports, or information to officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act; provided that such disclosure will be performed in compliance with the Tribal Public Documents Statute and applicable regulations. In any instance where the LTBB lacks jurisdiction over the person charged, the Program may refer the action to the appropriate U.S. EPA Regional Administrator and/or U.S. Department of Justice official.

SECTION XLIX. GENERAL ENFORCEMENT AUTHORITY

A. In general

Whenever, on the basis of any information available to the Program, the Program finds that any person (including the LTBB and any instrumentality of the LTBB, but only with regard to their role as a point or non-point source, industrial user of a publicly owned treatment works or a treatment works treating domestic sewage) has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Program may:

1. Issue and serve on such person a citation requiring such person to comply with such requirement or prohibition, including a citation requiring compliance on an emergency basis, pursuant to the provisions of this section;

2. Issue and serve on such person a citation imposing penalties, in accordance with this section and Section LI of this Act;

3. Request that the LTBB bring a civil action, including an action for injunctive relief, in accordance with Section L(A) of this Act; and/or

4. Request that the LTBB Prosecutor's Office bring a criminal action in accordance with Section L(B) of this Act, bring an action under the Clean Water Act, and/or refer any criminal enforcement action or portion of such action to the U.S. Environmental Protection Agency Regional Administrator for Region 5.

B. Requirements for Citations

1. A citation, including a penalty citation, issued under Paragraph (A)(1) or (2) of this section shall:

a. state with reasonable specificity the nature of the violation;

b. state that the alleged violator is entitled to a hearing in Tribal Court, if such hearing is requested in writing within 30 calendar days after the date of issuance of the citation; and

c. specify a time for compliance that the Program determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

2. The citation shall become effective immediately upon the expiration of 30 calendar days after the date of issuance of the citation if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Court, except as provided under Subsection (C) for emergency citations.

3. The citation may be conditional and require a person to refrain from particular acts unless certain conditions are met.

4. If appropriate, a copy of the citation shall be sent to U.S. EPA Region 5 and, if the citation is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation.

5. No citation issued under this section shall prevent the LTBB from assessing any penalties or otherwise affect or limit the LTBB's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

C. Emergency Citations

1. Notwithstanding any permit issued under this Act, if the Program determines that discharge of pollutants into LTBB Waters or into a POTW or a treatment works treating domestic sewage, or that pollution from a non-point source, or a combination of such sources, is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the General Counsel, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to Subsection (E) of this section, the Program may issue an emergency citation to protect public health or welfare or the environment.

2. An emergency citation may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 calendar days, unless the Program brings an action pursuant to Subsection (E) of this section within the 60-day period. If the Program brings such an action, the citation shall remain in effect for an additional 14 calendar days or for such longer period as may be authorized by the court in which such action is brought.

3. Any person subject to an emergency citation may file with the Tribal Court, with a copy provided to the Program, a written request for a hearing on the citation within 30 calendar days of issuance of the citation. If a timely request for a hearing is not made the citation shall be final and not subject to judicial review. The request for a hearing may be

combined with a request for a stay pending the outcome of the hearing. The Tribal Court shall grant or deny the request for a stay within five business days of receipt of the request.

D. Enforcement of Citations and Orders

Citations and orders, including emergency and penalty citations and orders, may be enforced by the LTBB Natural Resources Department Conservation Enforcement Division, the LTBB Prosecutors Office, and the Law Enforcement Division. Those authorized to enforce the Program's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the citation or order and demanding compliance; and

2. Terminating operations at facilities not in compliance.

E. Injunctive Relief

The Program may seek injunctive relief pursuant to Section L(A) of this Act to restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to a discharge or other activity affecting the quality of LTBB Waters.

SECTION L. JUDICIAL ENFORCEMENT

A. Civil Judicial Enforcement

The Program may request that the LTBB file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than $500 and not more than $25,000 per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or

3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Program shall request the LTBB to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) & (2).

B. Criminal Penalties

Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit, citation, or order issued pursuant to this Act;

2. Makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit, citation, or order issued pursuant to this Act; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit, citation, or order issued pursuant to this Act;

shall, upon conviction, be punished by a fine of not less than $500 and not more than $5,000 per day of violation or imprisonment for not more than one year, or both, or such greater amounts and lengths of time as may be permissible under applicable law, or be subject to any other

penalty imposed by the court that is available under LTBB law. In any instance where LTBB lacks jurisdiction over the person charged, or where the Program is limited in the amount of the fine that he may impose, the Program may refer the action to the U.S. EPA Regional Administrator for Region 5, pursuant to Section XLIX(A)(4) of this Act, for criminal prosecution in federal court. For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in Section III(A)(27) of this Act, any responsible corporate officer.

C. Jurisdiction and Venue of Tribal Court

Any action under this section shall be brought in the LTBB Tribal Court, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this section, collect any fees or noncompliance penalties owed the LTBB under this Act, and award any other appropriate relief.

D. Calculation of Penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section or Section LI, if the Program has notified the source in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Tribal Court that alleges any violation described in Subsection (A) of this section.

2. In determining the amount of a penalty assessed under this section or Section LI, the following factors shall be considered: the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only,

the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant.

3. In lieu of or in addition to a monetary penalty, the Program may impose or may request the LTBB to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

E. Failure to Pay Penalty

If any person fails to pay a civil penalty, the Program shall request the LTBB to bring a civil action in the Tribal Court to enforce the penalty order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or the amount of the penalty shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Program may by regulation establish higher penalties to take into account situations where the prime rate is higher.

F. Seizure of Property

Any officer authorized pursuant to Section XLIX(D) to enforce citations or orders under this Act may seize the property of any person who commits and is charged with a violation of any of the provisions of this Act, the regulations promulgated hereunder, and permits, citations and orders issued hereunder, if such property is located within the Reservation. Such property shall be seized as security for the payment of any civil or criminal penalties or damages and is subject to forfeiture to LTBB to accomplish such payment.

SECTION LI. ADMINISTRATIVE ASSESSMENT OF PENALTIES

A. Basis for Penalty Citation

The Program may issue against any person a penalty citation assessing a civil administrative penalty of up to $10,000 per day per violation whenever the Program finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit, citation or order issued pursuant to this Act, or a fee assessed under this Act. The Program's authority under this subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed $100,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Program and the General Counsel jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged and shall not be subject to judicial review. The Program may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this section.

B. Hearing Requirement

The Program shall assess an administrative penalty under this section by issuing a citation pursuant to Section XLIX(B) of this Act. Before issuing a penalty citation, the Program shall give written notice of the proposed citation to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Failure to Pay Penalty

If any person fails to comply with a penalty citation after the citation has become final, the Program shall request the LTBB to bring a civil action in the Tribal Court to enforce the citation or recover the amount ordered or assessed plus interest, from the date of the final citation or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the citation or penalty assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such

person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than 10 percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Program may by regulation establish higher penalties to take into account situations where the prime rate is higher.

D. Calculation of Penalty

In determining the amount of any penalty to be assessed under this section, the Program or the court, as appropriate, shall take into consideration the factors enumerated in Section L(D) of this Act.

PART 11. RULEMAKING AND JUDICIAL REVIEW

SECTION LII. RULEMAKING

A. Public Notice and Comment

Notice of any proposed regulation shall be published in a newspaper of general circulation on the Reservation and shall be posted on the LTBB website for seven working days. The notice shall specify the period available for public comment, which must be at least 30 calendar days, and the date, time and place of any public hearing, and shall state how the public may review and obtain a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Program shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Program shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally at a public hearing, in Anishinaabemowin or English, their views, data or arguments; and shall keep the rulemaking record open for at least ten calendar days after the public hearing to provide an opportunity for submission of rebuttal and supplementary information.

B. Final Rule

The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period. The final regulation shall become effective upon approval by the Natural Resources Commission and the Tribal Council, except that if the Tribal Council takes no action within 30 days the regulation shall be deemed approved, pursuant to the LTBB Administrative Procedures Act. The final regulation, together with significant comments and the responses, shall be published on the LTBB website within seven working days after approval of the regulation, express or implied, by the Tribal Council.

SECTION LIII. REVIEW IN TRIBAL COURT

A. Petitions for Review of Final Actions of the Program

Anyone seeking to challenge a final action taken by the Program under this Act must file a petition for review of the action in Tribal Court. If the challenge is to a regulation, the petition shall be filed within 60 calendar days from the date of the regulation's approval by the Tribal Council, pursuant to Section LII(B). Challenges to a permit decision must be filed within 60 calendar days of the date of issuance of a final decision by the EAB. Permitting decisions that have not been appealed to the EAB will not be reviewed by the Tribal Court. For challenges to any other type of final action, the petition shall be filed within 60 calendar days from the date that notice of such final action is first published or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 calendar days after such grounds arise. The Tribal Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Program at the time of the final action from which the appeal is taken.

B. Review of Regulations

With respect to any regulations promulgated under this Act or other notice and comment actions taken pursuant to this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Program that it was impracticable to raise the objection within

such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation or other action, the person may request the Program to reconsider the regulation or other notice-and-comment action and the Program may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Program declines to convene such a proceeding, the person may seek review of such refusal in the Tribal Court. Such reconsideration shall not postpone the effectiveness of the regulation or other action, although its effectiveness may be stayed by the Program or the court for up to three months.

C. Other Limitations on Review

1. If judicial review of a final action of the Program could have been obtained under subsection (A) of this section that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. Review of citations may be obtained only if a hearing was requested pursuant to Subsections XLIX(B) or (C) and LI(B). In that case a petition for review shall be brought in the Tribal Appellate Court.

3. Except as otherwise expressly allowed by LTBB law, no interlocutory appeals shall be permitted with regard to determinations made by the Program under this Act. In reviewing alleged procedural errors, the court may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or permitting action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

D. Standards for Review

In reviewing any final action of the Program or determination by the EAB undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;

3. Without observance of procedure required by law; or

4. Unsupported by substantial evidence.

E. Relief Available

In any action brought pursuant to the provisions of this section, relief shall be limited to declaratory relief and the Court shall have no jurisdiction to grant any other relief.

SECTION LIV. SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION LV. Effective Date

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Treasurer and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 1, 2016 at which a quorum was present, by a vote of 7 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Frank Bernard	X			
David Harrington	X			
Beatrice A. Law				X
Dexter McNamara	X			
Michael Naganashe	X			
Julie A. Shananaquet	X			
Aaron Otto	X			
Marcella R. Reyes	X			

Date: 9-2-2016 Marcella R. Reyes

Marcella R. Reyes, Treasurer

Date: 9-1-2016

Aaron Otto, Secretary

Received by the Executive Office on 9-2-16 by

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 9-15-16 Regina Gasco-Bentley

Regina Gasco Bentley, Tribal Chairperson