

St. Croix Tribal Council

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RESOLUTION NO. 06.09.05.01

BROWNFIELDS REHABILITATION ORDINANCE

WHEREAS, the St. Croix Tribal Council is the governing body of the St. Croix Chippewa Indians of Wisconsin; and

WHEREAS, the identification and remediation of Brownfield sites on the St. Croix Reservation is important to the protection of human health and the environment, and is a necessary prerequisite to the re-use of such sites for other purposes;

NOW, THEREFORE BE IT RESOLVED that the St. Croix Tribe hereby approves the attached Brownfield's Rehabilitation Ordinance.

CERTIFICATION

I, the undersigned, as Secretary/Treasurer of the Tribal Council of the St. Croix Chippewa Indians of Wisconsin, hereby certify that the Tribal Council is composed of five (5) members, of whom four (4) being present, constituted a quorum at a meeting thereof duly called, convened, and held on this 9th day of June, 2005; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of four (4) members, zero (0) against, zero (0) abstaining and that said resolution has not been rescinded or amended in any way.



Leo Butler, Secretary/Treasurer
St. Croix Tribal Council

David "Maabin" Merrill
Tribal Chairman
Round Lake Community

Michael L. Bearhart
Vice-Chairman
Maple Plain Community

Leo Butler
Secretary/Treasurer
Sand Lake Community

Gloria E. Benjamin
Member
Danbury Community

Lewis Taylor
Member
Sand Lake Community

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN BROWNFIELDS REHABILITATION ORDINANCE

Sec. 100.01. Purpose. The purpose of this ordinance is to provide for the identification and cleanup of brownfield sites located on the St. Croix Reservation.

Sec. 100.02. Definitions. In this ordinance terms have the meanings as stated below:

(a) "Agency" means the Tribe's Environmental Protection Agency.

(b) "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(c) "Hazardous substance" means

(1) Listed hazardous substances. Any element or compound as listed by the United States E.P.A. in the table provided at 40 CFR 302.4.

(2) Unlisted hazardous substances. A solid waste which is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), if it exhibits any of the ignitability, corrosivity, reactivity, or toxicity characteristics identified in 40 CFR 261.20 through 261.24.

(3) Petroleum products. Petroleum, including crude oil or any fraction thereof; natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(d) "Pollutant or contaminant" shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring;

(e) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, and the normal application of fertilizer. Release also means threat of release.

(f) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms include, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided for.

(g) "Remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The terms include, but are not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(h) "Reservation" means the reservation and other trust lands of the Tribe.

(i) "Respond" or "response" means remove, removal, remedy, and remedial action, and enforcement activities related thereto.

(j) "Tribal Court" means the tribal court of the Tribe.

(k) "Tribe" means the St. Croix Chippewa Indians of Wisconsin.

Sec. 100.03. Abbreviations. In this ordinance abbreviations have the meanings as stated below:

(a) ARAR means applicable or relevant and appropriate requirements.

(b) ATSDR means Agency for Toxic Substances and Disease Registry.

(c) CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq.

(d) FS means feasibility study.

(e) NCP is the National Oil and Hazardous Substances Pollution Contingency Plan developed under CERCLA to address releases of hazardous substance.

(f) NPL means the National Priorities List composed of the sites representing the most serious public health and environmental risks as assessed under CERCLA's Hazard Ranking System.

(g) PRP means a potentially responsible party under CERCLA or this ordinance.

(h) RA means remedial action.

(i) RD means remedial design.

(j) RI means remedial investigation.

(k) ROD means record of decision.

(l) USEPA means the United States Environmental Protection Agency.

Sec. 200.01. Identification and characterization of brownfield sites.

(a) Criteria. The Agency shall assess any site reasonably suspected of being a brownfield site. The agency shall employ the following criteria to assess and characterize a suspected brownfield site:

(1) The results of an inquiry by an environmental professional.

(2) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

(3) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

(4) Searches for recorded environmental cleanup liens against the facility that are filed under federal, state, tribal, or local law.

(5) Reviews of federal, state, tribal, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

(6) Visual inspections of the facility and of adjoining properties.

(7) The relationship of past purchase price or current offering price to the value of the property, if the property was not contaminated.

(8) Commonly known or reasonably ascertainable information about the property.

(9) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(b) USEPA rule. The application of the criteria set forth in subsection (b), above, shall follow the standards and procedures set out in any final rule promulgated by the United States E.P.A. pursuant to 42 U.S.C. §9601(35)(B)(ii).

(c) ASTM standard. Until the United States E.P.A. promulgates a final rule pursuant to 42 U.S.C. §9601(35)(B)(ii), the application of the criteria set forth in subsection (b), above, shall follow the standards and procedures set out in the document of the American Society for Testing and Materials (ASTM), known as "Standard E1527-00", entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

Sec. 300.01. Public participation.

(a) Objectives. The objectives of public participation under this section are:

(1) To assure that the public has the opportunity to understand any proposed or final remedial action plan and that the Tribe fully considers the public's concerns about particular brownfield sites.

(2) To assure that tribal action is as responsive as possible to public concerns.

(3) To encourage public involvement in the identification and cleanup of brownfields.

(4) To keep the public informed about significant issues and proposed project or program changes as they are made.

(5) To foster a spirit of openness and trust regarding brownfield site issues.

(b) The public. The term "the public" refers to the general populace as a whole and to identifiable segments of the public, such as tribal elders; consumer and environmental organizations; trade, industrial, labor, and agricultural associations; public

health, professional, and scientific societies; civic associations; public officials; and governmental and educational associations.

(c) Community interviews. Before the Agency develops a plan for remedial action, it shall conduct interviews with the public to solicit their concerns and information needs, and to learn how and when citizens would like to be involved in the brownfields process.

(d) Proposed plan. Before the adoption of any plan for remedial action at a brownfield site, the Tribe's EPA shall:

(1) Publish a notice and brief analysis of the proposed plan and make the plan available to the public. The notice and analysis shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting in or near the community where the brownfield site is located, regarding the proposed plan and regarding any proposed findings justifying a remedial action that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria. The comment period shall be at least 30 days. The Agency shall keep a transcript of the meeting and make the transcript available to the public.

(3) PRPs may participate in aspects of community information programs at the discretion of and with oversight by the Agency.

(e) Final plan. Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (d). If the Agency determines that a change could not have been reasonably anticipated by the public based on the information available in the proposed plan or the supporting analysis and information in the administrative record, then it shall allow additional public comment on the change.

(f) Explanation of differences. If any remedial action, enforcement action, settlement, or consent decree is taken or entered into that differs in any significant respect from a final plan published under subsection (e), the Agency shall publish an explanation of the significant differences and the reasons such changes were made.

(g) Publication. Publication required in this section shall be in "The Vision" and the local newspaper most widely read in the affected community (not including a free paper composed primarily of advertisements), which may be a weekly newspaper. In addition, each item developed, received, published, or made available to the public under

this section shall be part of a local information repository for the site maintained at the Agency's office, and shall be available for public inspection and copying. The Agency may charge reasonable copy costs for the meeting transcript under subsection (d)(2) and for other requested documents.

Section 400.01. Remediation purpose and principles.

(a) Purpose. The purpose of the remedy selection process is to implement remedies that eliminate, reduce, or control risks to human health and the environment, and that minimize untreated hazardous substances.

(b) Principles. The Agency shall consider the following general principles of program management during the remediation process:

(1) Sites should generally be remediated in operable units when early actions are necessary or appropriate to achieve significant risk reduction quickly, when phased analysis and response is necessary or appropriate given the size or complexity of the site, or to expedite the completion of total site cleanup.

(2) Operable units, including interim action operable units, should not be inconsistent with nor preclude implementation of the expected final remedy.

(3) Site-specific data needs, the evaluation of alternatives, and the documentation of the selected remedy should reflect the scope and complexity of the site problems being addressed.

(4) Treatment shall be used to address the principal threats posed by a site, wherever practicable.

(5) Engineering controls, such as containment, shall be only used for waste that poses a relatively low long-term threat or where treatment is impracticable with current technology.

(6) Institutional controls, such as water use and deed restrictions, shall be used to supplement engineering controls as appropriate for short- and long-term management to prevent or limit exposure to hazardous substances, pollutants, or contaminants. Institutional controls may be used during the conduct of the remedial investigation/feasibility study (RI/FS) and implementation of the remedial action and, where necessary, as a component of the completed remedy. The use of institutional controls shall not substitute for active response measures.

(7) Innovative technology shall be used when such technology offers the potential for comparable or superior treatment performance or implementability, fewer or lesser adverse impacts than other available approaches, or lower costs for similar levels of performance than demonstrated technologies.

(8) Usable ground waters shall be returned to their beneficial uses wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site. When restoration of ground water to beneficial uses is not practicable, further migration of the plume and exposure to the contaminated ground water shall be prevented and, and further risk reduction shall be evaluated.

Sec. 400.02. Appropriate actions and methods of remedying releases.

(a) List of actions. This list describes types of remedial actions generally appropriate for specific situations commonly found at remedial sites and lists methods for remedying releases that may be considered by the agency to accomplish a particular response action. This list is not inclusive of all possible methods of remedying releases and does not limit the agency from selecting any other actions deemed necessary in response to any situation.

(b) Contaminated soil. In response to contaminated soil, sediment, or waste, the following types of response actions shall generally be considered: removal, treatment, or containment of the soil, sediment, or waste to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to contaminate other media (ground water, surface water, or air) and to reduce or eliminate the potential for such substances to be inhaled, absorbed, or ingested.

(1) Techniques for removing contaminated soil, sediment, or waste include the following:

- (i) Excavation.
- (ii) Hydraulic dredging.
- (iii) Mechanical dredging.

(2) Techniques for treating contaminated soil, sediment, or waste include the following:

(i) Biological methods, including the following:
(A) Treatment via modified conventional wastewater treatment techniques.

- (B) Anaerobic, aerated, and facultative lagoons.
- (C) Supported growth biological reactors.
- (D) Microbial biodegradation.

- (ii) Chemical methods, including the following:
 - (A) Chlorination.
 - (B) Precipitation, flocculation, sedimentation.
 - (C) Neutralization.
 - (D) Equalization.
 - (E) Chemical oxidation.
 - (F) Natural attenuation

(iii) Physical methods, including the following:

- (A) Air stripping.
- (B) Carbon absorption.
- (C) Ion exchange.
- (D) Reverse osmosis.
- (E) Permeable bed treatment.
- (F) Wet air oxidation.
- (G) Solidification.
- (H) Encapsulation.
- (I) Soil washing or flushing.
- (J) Incineration.
- (K) Air injection

(c) Contaminated ground water. In response to contaminated ground water, the following types of response actions will generally be considered: Elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination.

(1) Techniques that can be used to contain or restore contaminated ground water include the following:

(i) Impermeable barriers, including the following:

- (A) Slurry walls.
- (B) Grout curtains.
- (C) Sheet pilings.

(ii) Permeable treatment beds.

(iii) Ground-water pumping, including the following:

- (A) Water table adjustment.
- (B) Plume containment.

(iv) Leachate control, including the following:

- (A) Subsurface drains.
- (B) Drainage ditches.
- (C) Liners.

(2) Techniques suitable for the control of contamination of water and sewer lines include the following:

- (i) Grouting.
- (ii) Pipe relining and sleeving.

(iii) Sewer relocation.

(d) Contaminated ground water. In response to contaminated surface water, the following types of response actions shall generally be considered: Elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential.

(2) Techniques that can be used to control or remediate surface water include the following:

(i) Surface seals.

(ii) Surface water diversions and collection systems, including the

following:

(A) Dikes and berms.

(B) Ditches, diversions, waterways.

(C) Chutes and downpipes.

(D) Levees.

(E) Seepage basins and ditches.

(F) Sedimentation basins and ditches.

(G) Terraces and benches.

(iii) Grading.

(iv) Revegetation.

(e) Air emissions. In response to air emissions, the following techniques will be considered:

(i) Pipe vents.

(ii) Trench vents.

(iii) Gas barriers.

(iv) Gas collection.

(v) Overpacking.

(vi) Treatment for gaseous emissions, including the following:

(A) Vapor phase adsorption.

(B) Thermal oxidation.

Sec. 400.03. Remedial investigation/feasibility study applicability and purpose.

(a) Applicability to brownfield sites. Before remedial action is taken at any brownfield site identified pursuant to sec. 200.01, a remedial investigation/feasibility study as provided for in this section shall be completed. If the Agency does not serve as the lead agency on a particular site, then the Agency shall assist the lead agency in performing the functions set forth in this section.

(b) Purpose. The purpose of the remedial investigation/feasibility study (RI/FS) is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting an RI/FS generally includes the following activities: project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

Sec. 400.04. Remedial investigation/feasibility study scoping.

(a) Scoping. In implementing this section, the Agency should consider the program goal and program management principles contained in this section. The investigative and analytical studies should be tailored to site circumstances so that the scope and detail of the analysis is appropriate to the complexity of site problems being addressed. During scoping, the Agency shall confer with other support agencies involved with the site to identify the optimal set and sequence of actions necessary to address site problems.

(b) Scoping activities. To conduct the scoping phase, the Agency shall:

(1) Assemble and evaluate existing data on the site, including the results of any removal actions, remedial preliminary assessment and site inspections, and the NPL listing process.

(2) Develop a conceptual understanding of the site based on the evaluation of existing data.

(3) Identify likely response scenarios and potentially applicable technologies and operable units that may address site problems.

(4) Undertake limited data collection efforts or studies where this information will assist in scoping the RI/FS or accelerate response actions, and begin to identify the need for treatability studies, as appropriate.

(5) Identify the type, quality, and quantity of the data that will be collected during the RI/FS to support decisions regarding remedial response activities.

(6) Prepare site-specific health and safety plans that shall specify, at a minimum, employee training and protective equipment, medical surveillance

requirements, standard operating procedures, and a contingency plan that conforms with 29 CFR 1910.120 (l)(1) and (l)(2).

(7) If natural resources are or may be injured by the release, consider a recommendation to the Tribal Council of appropriate actions which the Council may take under federal law as natural resource trustee

(8) Develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs. Sampling and analysis plans shall be reviewed and approved by the Agency. The sampling and analysis plans shall consist of two parts:

(i) The field sampling plan, which describes the number, type, and location of samples and the type of analyses; and

(ii) The quality assurance project plan, which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in selecting the appropriate remedy.

(9) Initiate the identification of potential tribal, federal and state ARARs and, as appropriate, other criteria, advisories, or guidance to be considered.

Sec. 400.05. Remedial investigation.

(a) Purpose. The purpose of the remedial investigation (RI) is to collect data necessary to adequately characterize the site for the purpose of developing and evaluating effective remedial alternatives. To characterize the site, the lead agency shall, as appropriate, conduct field investigations, including treatability studies, and conduct a baseline risk assessment. The RI provides information to assess the risks to human health and the environment and to support the development, evaluation, and selection of appropriate response alternatives. Site characterization may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the investigation. Because estimates of actual or potential exposures and associated impacts on human and environmental receptors may be refined throughout the phases of the RI as new information is obtained, site characterization activities should be fully integrated with the development and evaluation of alternatives in the feasibility study. Bench- or pilot-scale treatability studies shall be conducted, when appropriate and practicable, to provide additional data for the detailed analysis and to support engineering design of remedial alternatives.

(b) Factors. The Agency shall characterize the nature of and threat posed by the hazardous substances and hazardous materials and gather data necessary to assess the extent to which the release poses a threat to human health or the environment or to support the analysis and design of potential response actions by conducting, as appropriate, field investigations to assess the following factors:

(1) Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology.

(2) Cultural characteristics of the site.

(3) Characteristics or classifications of air, surface water, and ground water.

(4) The general characteristics of the waste, including quantities, state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility.

(5) The extent to which the source can be adequately identified and characterized

(6) Actual and potential exposure pathways through environmental media.

(7) Actual and potential exposure routes, for example, inhalation and ingestion.

(8) Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedial action alternatives.

(c) The Agency shall conduct a site-specific baseline risk assessment to characterize the current and potential threats to human health and the environment that may be posed by contaminants migrating to ground water or surface water, releasing to air, leaching through soil, remaining in the soil, and bioaccumulating in the food chain. The results of the baseline risk assessment will help establish acceptable exposure levels for use in developing remedial alternatives in the FS, as described in section 400.06.

Sec. 400.06. Feasibility study.

(a) Purpose. The purpose of the feasibility study (FS) is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the remedial action options can be presented to a decision-maker and an appropriate remedy selected. The Agency may develop a feasibility study to address a specific site problem or the entire site. The development and evaluation of alternatives shall reflect the scope and complexity of the remedial action under consideration and the site problems being addressed. Development of alternatives shall be fully integrated with the site characterization activities of the remedial investigation described section 400.05. The Agency shall include an alternatives screening step, when needed, to select a reasonable number of alternatives for detailed analysis.

(b) Alternatives. Alternatives shall be developed that protect human health and

the environment by recycling waste or by eliminating, reducing, and/or controlling risks posed through each pathway by a site. The number and type of alternatives to be analyzed shall be determined at each site, taking into account the scope, characteristics, and complexity of the site problem that is being addressed.

(c) Factors. In developing and, as appropriate, screening the alternatives, the Agency shall:

(1) Establish remedial action objectives specifying contaminants and media of concern, potential exposure pathways, and remediation goals. Initially, preliminary remediation goals are developed based on readily available information, such as chemical-specific ARARs or other reliable information. Preliminary remediation goals should be modified, as necessary, as more information becomes available during the RI/FS. Final remediation goals will be determined when the remedy is selected. Remediation goals shall establish acceptable exposure levels that are protective of human health and the environment and shall be developed by considering the following:

(A) Applicable or relevant and appropriate requirements under tribal, federal, or state environmental or facility siting laws, if available, and the following factors:

(i) For systemic toxicants, acceptable exposure levels shall represent concentration levels to which the human population, including sensitive subgroups, may be exposed without adverse effect during a lifetime or part of a lifetime, incorporating an adequate margin of safety.

(ii) For known or suspected carcinogens, acceptable exposure levels are generally concentration levels that represent an excess upper bound lifetime cancer risk to an individual of between 10^{-4} and 10^{-6} using information on the relationship between dose and response. The 10^{-6} risk level shall be used as the point of departure for determining remediation goals for alternatives when ARARs are not available or are not sufficiently protective because of the presence of multiple contaminants at a site or multiple pathways of exposure.

(iii) Factors related to technical limitations such as detection/quantification limits for contaminants.

(iv) Factors related to uncertainty.

(v) Other pertinent information.

(B) Maximum contaminant level goals (MCLGs), established under the Safe Drinking Water Act, that are set at levels above zero, shall be attained by remedial actions for ground or surface waters that are current or potential sources of drinking water, where the MCLGs are relevant and appropriate under the circumstances of the release based on the factors in 40 CFR Sec. 300.400(g)(2). If an MCLG is

determined not to be relevant and appropriate, the corresponding maximum contaminant level (MCL) shall be attained where relevant and appropriate to the circumstances of the release.

(C) Where the MCLG for a contaminant has been set at a level of zero, the MCL promulgated for that contaminant under the Safe Drinking Water Act shall be attained by remedial actions for ground or surface waters that are current or potential sources of drinking water, where the MCL is relevant and appropriate under the circumstances of the release based on the factors in 40 CFR Sec. 300.400(g)(2).

(D) In cases involving multiple contaminants or pathways where attainment of chemical-specific ARARs will result in cumulative risk in excess of 10^{-4} , criteria in paragraph (e)(2)(i)(A) of this section may also be considered when determining the cleanup level to be attained.

(E) Water quality criteria established under sections 303 or 304 of the Clean Water Act shall be attained where relevant and appropriate under the circumstances of the release.

(F) An alternate concentration limit (ACL) may be established in accordance with 42 U.S.C. § 9621(d)(2)(B)(ii).

(G) Environmental evaluations shall be performed to assess threats to the environment, especially sensitive habitats and critical habitats of species protected under the Endangered Species Act.

(2) Identify and evaluate potentially suitable technologies, including innovative technologies.

(3) Assemble suitable technologies into alternative remedial actions.

(4) For source control actions, the Agency shall develop, as appropriate:

(A) A range of alternatives in which treatment that reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants is a principal element. As appropriate, this range shall include an alternative that removes or destroys hazardous substances, pollutants, or contaminants to the maximum extent feasible, eliminating or minimizing, to the degree possible, the need for long-term management. The Agency also shall develop, as appropriate, other alternatives which, at a minimum, treat the principal threats posed by the site but vary in the degree of treatment employed and the quantities and characteristics of the treatment residuals and untreated waste that must be managed; and

(B) One or more alternatives that involve little or no treatment, but provide protection of human health and the environment primarily by preventing or controlling exposure to hazardous substances, pollutants, or contaminants, through

engineering controls, for example, containment, and, as necessary, institutional controls to protect human health and the environment and to assure continued effectiveness of the response action.

(5) For ground-water response actions, the Agency shall develop a limited number of remedial alternatives that attain site-specific remediation levels within different restoration time periods utilizing one or more different technologies.

(6) The Agency shall develop one or more innovative treatment technologies for further consideration if those technologies offer the potential for comparable or superior performance or implementability; fewer or lesser adverse impacts than other available approaches; or lower costs for similar levels of performance than demonstrated treatment technologies.

(7) The no-action alternative, which may be no further action if some removal or remedial action has already occurred at the site, shall be developed.

(8) As appropriate, and to the extent sufficient information is available, the short- and long-term aspects of the following three criteria shall be used to guide the development and screening of remedial alternatives:

(A) Effectiveness. This criterion focuses on the degree to which an alternative reduces toxicity, mobility, or volume through treatment, minimizes residual risks and affords long-term protection, complies with ARARs, minimizes short-term impacts, and how quickly it achieves protection. Alternatives providing significantly less effectiveness than other, more promising alternatives may be eliminated. Alternatives that do not provide adequate protection of human health and the environment shall be eliminated from further consideration.

(B) Implementability. This criterion focuses on the technical feasibility and availability of the technologies each alternative would employ and the administrative feasibility of implementing the alternative. Alternatives that are technically or administratively infeasible or that would require equipment, specialists, or facilities that are not available within a reasonable period of time may be eliminated from further consideration.

(C) Cost. The costs of construction and any long-term costs to operate and maintain the alternatives shall be considered. Costs that are grossly excessive compared to the overall effectiveness of alternatives may be considered as one of several factors used to eliminate alternatives. Alternatives providing effectiveness and implementability similar to that of another alternative by employing a similar method of treatment or engineering control, but at greater cost, may be eliminated.

(9) The Agency shall notify any support agencies involved in the site of the alternatives that will be evaluated in detail to facilitate the identification of ARARs and, as appropriate, pertinent advisories, criteria, or guidance to be considered.

(10) Detailed analysis of alternatives.

(A) A detailed analysis shall be conducted on the limited number of alternatives that represent viable approaches to remedial action after evaluation in the screening stage. The lead and support agencies must identify their ARARs related to specific actions in a timely manner and no later than the early stages of the comparative analysis. The lead and support agencies may also, as appropriate, identify other pertinent advisories, criteria, or guidance in a timely manner.

(B) The detailed analysis consists of an assessment of individual alternatives against each of nine evaluation criteria and a comparative analysis that focuses upon the relative performance of each alternative against those criteria.

(C) Ten criteria for evaluation. The analysis of alternatives under review shall reflect the scope and complexity of site problems and alternatives being evaluated and consider the relative significance of the factors within each criteria. The ten evaluation criteria are as follows:

(i) Overall protection of human health and the environment.

Alternatives shall be assessed to determine whether they can adequately protect human health and the environment, in both the short- and long-term, from unacceptable risks posed by hazardous substances, pollutants, or contaminants present at the site by eliminating, reducing, or controlling exposures to levels established during development of remediation goals consistent with Sec. 400.06(b). Overall protection of human health and the environment draws on the assessments of other evaluation criteria, especially long-term effectiveness and permanence, short-term effectiveness, and compliance with ARARs.

(ii) Compliance with ARARs. The alternatives shall be assessed to determine whether they attain applicable or relevant and appropriate requirements under tribal, federal, and state environmental or facility siting laws or provide grounds for invoking one of the waivers under sec. 400.07(f).

(iii) Long-term effectiveness and permanence. Alternatives shall be assessed for the long-term effectiveness and permanence they afford, along with the degree of certainty that the alternative will prove successful. Factors that shall be considered, as appropriate, include the following:

(A) Magnitude of residual risk remaining from untreated waste or treatment residuals remaining at the conclusion of the remedial activities. The characteristics of the residuals should be considered to the degree that they remain hazardous, taking into account their volume, toxicity, mobility, and propensity to bioaccumulate.

(B) Adequacy and reliability of controls such as containment systems and institutional controls that are necessary to manage treatment residuals and untreated waste. This factor addresses in particular the uncertainties associated with land disposal for providing long-term protection from residuals; the assessment of the potential need to replace technical components of the alternative, such as a cap, a slurry wall, or a treatment system; and the potential exposure pathways and risks posed should the remedial action need replacement.

(iv) Reduction of toxicity, mobility, or volume through treatment. The degree to which alternatives employ recycling or treatment that reduces toxicity, mobility, or volume shall be assessed, including how treatment is used to address the principal threats posed by the site. Factors that shall be considered, as appropriate, include the following:

(A) The treatment or recycling processes the alternatives employ and materials they will treat;

(B) The amount of hazardous substances, pollutants, or contaminants that will be destroyed, treated, or recycled;

(C) The degree of expected reduction in toxicity, mobility, or volume of the waste due to treatment or recycling and the specification of which reduction(s) are occurring;

(D) The degree to which the treatment is irreversible;

(E) The type and quantity of residuals that will remain following treatment, considering the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents; and

(F) The degree to which treatment reduces the inherent hazards posed by principal threats at the site.

(v). Cultural appropriateness. The cultural appropriateness of any alternative shall be assessed considering any cultural resources that may be affected by any alternative based on, as appropriate, interviews with elders, review of archeological materials, and a survey of other relevant sources of information.

(vi) Short-term effectiveness. The short-term impacts of alternatives shall be assessed considering the following:

(A) Short-term risks that might be posed to the community during implementation of an alternative;

(B) Potential impacts on workers during remedial action and the effectiveness and reliability of protective measures;

(C) Potential environmental impacts of the remedial action and the effectiveness and reliability of mitigative measures during implementation; and

(D) Time until protection is achieved.

(vii) Implementability. The ease or difficulty of implementing the alternatives shall be assessed by considering the following types of factors as appropriate:

(A) Technical feasibility, including technical difficulties and unknowns associated with the construction and operation of a technology, the reliability of the technology, ease of undertaking additional remedial actions, and the ability to monitor the effectiveness of the remedy.

(B) Administrative feasibility, including activities needed to coordinate with other offices and agencies and the ability and time required to obtain any necessary approvals and permits from other agencies (for off-site actions);

(C) Availability of services and materials, including the availability of adequate off-site treatment, storage capacity, and disposal capacity and services; the availability of necessary equipment and specialists, and provisions to ensure any necessary additional resources; the availability of services and materials; and availability of prospective technologies.

(viii) Cost. The types of costs that shall be assessed include the following:

(A) Capital costs, including both direct and indirect costs;

(B) Annual operation and maintenance costs; and

(C) Net present value of capital and costs for operations and maintenance.

(ix) USEPA acceptance. Assessment of USEPA concerns may not be completed until comments on the RI/FS are received but may be discussed, to the extent possible, in the proposed plan issued for public comment. The USEPA concerns that shall be assessed include the following:

(A) The USEPA's position and key concerns related to the preferred alternative and other alternatives; and

(B) USEPA comments on ARARs or the proposed use of waivers.

(x) Community acceptance. This assessment includes determining which components of the alternatives interested persons in the community support, have reservations about, or oppose. This assessment may not be completed until comments on the proposed plan are received.

Sec. 400.07. Selection of remedy.

(a) Purpose. Remedies selected shall reflect the scope and purpose of the actions being undertaken and how the action relates to long-term, comprehensive response at the site.

(b) Criteria. The criteria noted in section 400.06(c)(10)(C) are used to select a remedy. These criteria are categorized into three groups:

(1) Threshold criteria. Overall protection of human health and the environment and compliance with ARARs (unless a specific ARAR is waived) are threshold requirements that each alternative must meet in order to be eligible for selection.

(2) Primary balancing criteria. The five primary balancing criteria are long-term effectiveness and permanence; reduction of toxicity, mobility, or volume through treatment; short-term effectiveness; implementability; and cost.

(3) Modifying criteria. USEPA and community acceptance are modifying criteria that shall be considered in remedy selection.

(c) Two-step process. The selection of a remedial action is a two-step process. First, the Agency, in conjunction with the support agencies, identifies a preferred alternative and presents it to the public in a proposed plan, for review and comment. Second, the lead Agency shall review the public comments and consult with the support agency in order to determine if the alternative remains the most appropriate remedial action for the site or site problem. The lead agency, as determined under 40 CFR 300.515 makes the final remedy selection decision, which shall be documented in the Record of Decision (ROD). Each remedial alternative will employ the criteria as indicated in section 400.07(b) to make the following determination:

(1) Each remedial action selected shall be protective of human health and the environment.

(2) On-site remedial actions selected in a ROD must attain those ARARs that are identified at the time of ROD signature or provide grounds for invoking a waiver under Sec. 400.07(f).

(d) Requirements that are promulgated or modified after ROD signature must be attained (or waived) only when determined to be applicable or relevant and

appropriate and necessary to ensure that the remedy is protective of human health and the environment.

(e) Components of the remedy not described in the ROD must attain (or waive) requirements that are identified as applicable or relevant and appropriate at the time the amendment to the ROD or the explanation of significant difference describing the component is signed.

(f) An alternative that does not meet an ARAR under federal environmental or tribal environmental or facility siting laws may be selected under the following circumstances:

(1) The alternative is an interim measure and will become part of a total remedial action that will attain the applicable or relevant and appropriate federal or tribal requirement;

(2) Compliance with the requirement will result in greater risk to human health and the environment than other alternatives;

(3) Compliance with the requirement is technically impracticable from an engineering perspective;

(4) The alternative will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, or limitation through use of another method or approach;

(g) Each remedial action selected shall be cost-effective, provided that it first satisfies the threshold criteria set forth in Sec. 400.07(c)(1) and (2). Cost-effectiveness is determined by evaluating the following three of the five balancing criteria noted in Sec. 400.07(b)(2) to determine overall effectiveness: long-term effectiveness and permanence, reduction of toxicity, mobility, or volume through treatment, and short-term effectiveness. Overall effectiveness is then compared to cost to ensure that the remedy is cost-effective. A remedy shall be cost-effective if its costs are proportional to its overall effectiveness.

(h) Each remedial action shall utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. This requirement shall be fulfilled by selecting the alternative that satisfies Sec. 400.07(c)(1) and (2) and provides the best balance of trade-offs among alternatives in terms of the five primary balancing criteria noted in Sec. 400.07(b)(2). The balancing shall emphasize long-term effectiveness and reduction of toxicity, mobility, or volume through treatment. The balancing shall also consider the preference for treatment as a principal element and the bias against off-site land disposal of untreated waste. In making the determination under this paragraph, the modifying criteria of USEPA acceptance and community acceptance described Sec. 400.07(b)(3) shall also be considered.

(i) The proposed plan. In the first step in the remedy selection process, the Agency shall identify the alternative that best meets the requirements in Sec. 400.07(b)(2) above, and shall present that alternative to the public in a proposed plan. The Agency, in conjunction with any supporting agencies shall prepare a proposed plan that briefly describes the remedial alternatives analyzed by the Agency, proposes a preferred remedial action alternative, and summarizes the information relied upon to select the preferred alternative. The selection of remedy process for an operable unit may be initiated at any time during the remedial action process. The purpose of the proposed plan is to supplement the RI/FS and provide the public with a reasonable opportunity to comment on the preferred alternative for remedial action, as well as alternative plans under consideration, and to participate in the selection of remedial action at a site.

(j) Elements of proposed plan. At a minimum, the proposed plan shall:

(1) Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis established under Sec. 400.06;

(2) Identify and provide a discussion of the rationale that supports the preferred alternative;

(3) Provide a summary of any formal comments received from any support agency; and

(4) Provide a summary explanation of any proposed waiver identified under Sec. 400.07(f) from an ARAR.

(k) Public participation. The Agency, after preparation of the proposed plan and review by the support agency, shall conduct the public comment and participation activities set out in Sec. 300.01(d).

(l) Final remedy selection.

(1) In the second and final step in the remedy selection process, the Agency shall reassess its initial determination that the preferred alternative provides the best balance of trade-offs, now factoring in any new information or points of view expressed by the USEPA and community during the public comment period. The Agency shall consider USEPA and community comments regarding the Agency's evaluation of alternatives with respect to the other criteria. These comments may prompt the Agency to modify aspects of the preferred alternative or decide that another alternative provides a more appropriate balance. The Agency shall make the final remedy selection decision and document that decision in the ROD. After making a final remedy selection decision, the Agency shall follow the public notice procedures as set forth in Sec. 300.01(e), (f), and (g).

(2) If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use

and unrestricted exposure, the remedial action shall be considered a contingent final remedy, and the Agency shall review such action no less often than every five years after initiation of the selected remedial action to determine if any change in implementability or cost factors allows further reduction in hazardous substance, pollutants, or contaminant levels.

(m) Documenting the decision.

(1) To support the selection of a remedial action, all facts, analyses of facts, and site-specific policy determinations considered in the course of carrying out activities in this section shall be documented, as appropriate, in a record of decision, in a level of detail appropriate to the site situation, for inclusion in the administrative record of the decision. Documentation shall explain how the evaluation criteria Sec. 400.07(b) were used to select the remedy.

(2) The ROD shall describe the following requirements as they relate to the scope and objectives of the action:

(A) How the selected remedy is protective of human health and the environment, explaining how the remedy eliminates, reduces, or controls exposures to human and environmental receptors;

(B) The federal and tribal requirements that are applicable or relevant and appropriate to the site that the remedy will attain;

(C) The applicable or relevant and appropriate requirements of other federal and state laws that the remedy will not meet, the waiver invoked, and the justification for invoking the waiver;

(D) How the remedy is cost-effective, i.e., explaining how the remedy provides overall effectiveness proportional to its costs;

(E) How the remedy utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(F) Whether the preference for remedies employing treatment which permanently and significantly reduces the toxicity, mobility, or volume of the hazardous substances, pollutants, or contaminants as a principal element is or is not satisfied by the selected remedy. If this preference is not satisfied, the record of decision must explain why a remedial action involving such reductions in toxicity, mobility, or volume was not selected.

(3) The ROD also shall:

(A) Indicate, as appropriate, the remediation goals, discussed in Sec. 400.06(c)(1), that the remedy is expected to achieve. Performance shall be measured at appropriate locations in the ground water, surface water, soils, air, and other affected environmental media. Measurement relating to the performance of the treatment processes and the engineering controls may also be identified, as appropriate;

(B) Discuss significant changes and the response to comments received under Sec. 300.01;

(C) Describe whether hazardous substances, pollutants, or contaminants will remain at the site such that a review of the remedial action under Sec. 400.07(j)(2) no less often than every five years shall be required; and

(D) When appropriate, provide a commitment for further analysis and selection of long-term response measures within an appropriate time-frame.

(4) Community relations when the record of decision is signed. After the ROD is signed, the Agency shall:

(A) Publish a notice of the availability of the ROD in the publications designated in Sec. 301(g).

(B) Make the record of decision available for public inspection and copying at the Agency office prior to the commencement of any remedial action.

Sec. 400.08. Remedial design/remedial action purpose and principles.

(a) Purpose. The purpose of the remedial design/remedial action (RD/RA) stage is to develop the actual design of the selected remedy and implementation of the remedy through construction. A period of operation and maintenance may follow the RA activities.

(b) RD/RA activities. All RD/RA activities shall be in conformance with the remedy selected and set forth in the ROD or other decision document for that site.

(c) During the course of the RD/RA, the Agency shall be responsible for ensuring that all federal and tribal requirements that are identified in the ROD as applicable or relevant and appropriate requirements for the action are met. If waivers from any ARARs are involved, the Agency shall be responsible for ensuring that the conditions of the waivers are met.

Sec. 400.09. Changes in remedial action. After the adoption of the ROD, if the remedial action or enforcement action taken, or the settlement or consent decree entered into, differs significantly from the remedy selected in the ROD with respect to scope,

performance, or cost, the Agency shall consult with USEPA, as appropriate, and shall either:

(a) Publish an explanation of significant differences when the differences in the remedial or enforcement action, settlement, or consent decree significantly change but do not fundamentally alter the remedy selected in the ROD with respect to scope, performance, or cost. To issue an explanation of significant differences, the Agency shall either:

(1) Make the explanation of significant differences and supporting information available to the public in the administrative record the information repository established under sec. 300.01(g); and

(2) Publish a notice that briefly summarizes the explanation of significant differences, including the reasons for such differences, in the publications specified in Sec. 300.01(g); or

(b) Propose an amendment to the ROD if the differences in the remedial or enforcement action, settlement, or consent decree fundamentally alter the basic features of the selected remedy with respect to scope, performance, or cost. To amend the ROD, the Agency, in conjunction with the support agency shall issue a notice of availability and brief description of the proposed amendment to the ROD the publications specified in Sec. 300.01(g), and shall then follow all of the procedures specified in Sec. 300.01(d) – (g)

Sec. 400.10. Public information on engineering design. After the completion of the final engineering design, the Agency shall issue a fact sheet and provide, as appropriate, a public briefing prior to the initiation of the remedial action.

Sec. 500.01 Soil clean-up standards.

(a) As part of the RI/FS for any brownfield site, the Agency shall prescribe clean-up standards to be met for the site before it may be closed. The clean-up standards prescribed for a site shall meet the following requirements:

(1) Residual soil contamination at the site or facility shall not adversely affect human health;

(2) Residual soil contamination at the site or facility shall not adversely affect ground water;

(3) Residual soil contamination at the site or facility shall not adversely affect surface water;

(4) Residual soil contamination at the site or facility shall not adversely affect fish or wildlife;

(5) Residual soil contamination at the site or facility shall not adversely affect a sensitive environment; and

(6) Residual soil contamination at the site or facility shall not concentrate through plant uptake and adversely affect the food chain.

(7) Residual soil contamination at the site or facility shall not cause or contribute to contaminant migration.

(b) Compliance with soil clean-up standards. Contaminant concentrations in soil samples shall be determined using an Agency-approved and appropriate analytical method and reporting format. An appropriate analytical method shall have limits of detection or limits of quantitation, or both, at or below soil cleanup standards where possible. Limits of detection and of quantitation shall be reported with sample results.

(c) Limits of detection and quantitation. The following applies when a soil cleanup standard for a soil contaminant is below the limit of detection:

(1) If a soil contaminant is not detected in a sample, the soil cleanup standard shall not be considered to have been exceeded, unless the remedial action plan includes an appropriate analytical method for testing contaminants that may exist in soil at below-detectible limits but may bioaccumulate to detectible limits.

(2) If a soil contaminant is reported above the limit of detection but below the limit of quantitation, the soil cleanup standard shall be considered to have been exceeded if the presence of that soil contaminant has been confirmed by the use of an appropriate analytical method.

(d) The Agency shall establish a soil cleanup standard for a specific soil contaminant or physical location at a site or facility using one or both of the methods in subsection (1) or (2).

(1) Performance standard. If selected, a performance standard shall be established for a remedial action so that the remedial action is operated and maintained, until the lowest concentration that is practicable is achieved or a permanent engineering control is maintained, or both, so that the residual contaminants left in the soil meet the requirements of Sec. 500.01(a) and do not pose a threat to public health, safety and welfare or the environment.

(3) Residual contaminant levels specific to a site or facility. If selected, residual contaminant levels specific to a site or facility shall be established that meet the requirements of Sec. 500.01(a) and are protective of public health, safety and welfare and the environment and restore the environment to the lowest concentration practicable.

(e) The Agency may adopt specific requirements that meet the standards of Sec. 500.01(a) as developed by the Agency, the USEPA, the Wisconsin Department of Natural Resources, or other agencies, associations, or institutions.

Sec. 500.02. Management of contaminated soil excavated during response actions.

(a) Sections 500.02-500.06 establish minimum standards and procedures for the storage, transportation, treatment, and disposal of contaminated soil excavated during any response action conducted pursuant to this ordinance, to the extent that any such storage, transportation, treatment, and disposal occurs on the Reservation.

(b) For a period of 72 hours after an emergency immediate response is initiated under Sec. 600.01-600.03, the storage and transportation requirements of Sec. 500.03 and 500.04 do not apply except as specifically required by the Agency.

Sec. 500.03. Storage of contaminated soil excavated during response actions.

(a) Prohibited locations. Contaminated soil may not be stored in any of the following areas:

- (1) Within a floodplain.
- (2) Within 100 feet of any wetland or critical habitat area.
- (3) Within 300 feet of any navigable river, stream, lake, pond or flowage.
- (4) Within 100 feet of any water supply well for on-site storage or within 300 feet of any water supply well for off-site storage.

(b) Exemptions from prohibited locations. Contaminated soil may be stored in a location listed in subsection (b) if the Agency has granted a written exemption from that location standard, after considering all of the following:

- (1) Waste characteristics and quantities.
- (2) The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.
- (3) The unavailability of other environmentally suitable alternatives.
- (4) Compliance with other state and federal regulations.
- (5) The threat to public health, safety and welfare and the environment.

(c) Impervious base. Responsible parties shall place contaminated soil on base material impervious to the contaminant and to water, such as concrete, asphalt, plastic sheeting or an impervious construction fabric.

(d) Cover and anchoring. Responsible parties shall ensure that all contaminated soil in a storage area is sloped and graded to eliminate depressions in the surface and is covered. The cover shall be in place at all times when the soil is not being transferred. The cover shall be constructed and maintained in accordance with all of the following requirements:

(1) The cover shall be constructed of an impervious material, such as plastic sheeting, impervious construction fabric, or another flexible impervious material. The cover shall be formulated to resist degradation by ultraviolet light.

(2) The cover material shall be anchored in place, by means such as weights, ropes, cables, cords, chains or stakes to prevent the contaminated soil from being exposed.

(e) Surface water control. The Agency shall not permit surface water contact with the soil, and may require the construction of berms if necessary. Any water which has been in contact with contaminated soil shall be contained and may be replaced in the storage pile, or shall be collected and treated as contaminated leachate.

(f) Signs. Responsible parties shall post signs at the edge of any contaminated storage area, and shall maintain the signs until the area is closed by the Agency pursuant to sec. 900.01 with the following information:

(1) Name, address and phone number of the owner or operator of the site or facility or responsible parties.

(2) Types of hazardous substances or environmental pollution on the property.

(3) Agency-issued identification number for the site or facility.

(4) The anticipated month, day and year of removal of the soil pile.

(5) Any other information the Agency may request.

(6) An appropriate warning as prescribed by the Agency

(g) Inspections. Unless otherwise directed by the Agency, responsible parties shall ensure that contaminated soil storage piles are inspected at least once every 30 days, and shall immediately repair or replace any base, cover, anchoring and berm materials that do not meet the requirements of this section. Responsible parties shall also ensure that a

written log is maintained which includes the inspection dates, name of the inspector, the condition of the storage pile at the time of the inspection and any repairs that were made.

(h) Notification that soil is being transported to another property. Responsible parties shall notify the agency in writing if excavated contaminated soil is transported for storage to a property other than that from which it was excavated. Notification shall be made within 3 days after the first day that contaminated soil is transported to another property and shall include all of the following:

(1) The name, address and telephone number of the person who owns the site or facility from which the soil originated.

(2) The volume of soil being transported.

(3) The hazardous substances and environmental pollution present in the soil.

(4) The containment measures utilized to attain compliance with subsections (c), (d), and (e).

(5) The address and location by quarter-quarter section, township, range and county of the property from which the soil was excavated.

(6) The name, address and telephone number of the person who owns the property where the soil is stored.

(7) The address and location by quarter-quarter section, township, range and county of the property where the soil is stored.

(i) Notification to WDNR and/or MDNR. If the soil is transported off of the Reservation, the responsible party must notify the Wisconsin DNR and/or the Minnesota DNR as appropriate and comply with all state requirements.

(j) Notification of storage for 90 days or more. Responsible parties shall notify the Agency in writing if contaminated soil is stored for 90 days or more either on-site or off-site, within 3 business days after the ninetieth day. Notification shall include all of the following:

(1) The name, address and telephone number of responsible parties.

(2) The volume of soil being stored.

(3) The hazardous substances or environmental pollution present in the soil.

(4) The containment measures utilized to attain compliance with pars. (c), (d) and (e).

(5) The address and location by quarter-quarter section, township, range and county of the property where the soil is stored.

(6) A brief proposal for treatment and final placement of the soil.

(k) Requirements for temporary stockpiles. Sites or facilities where responsible parties temporarily store up to 2,500 cubic yards of excavated contaminated soil for 15 days or less, for the purpose of loading the soil into transfer vehicles or treatment units, must be operated in accordance with all of the following requirements, and need not comply with the requirements of subsections (a)-(h) and (j):

(1) The entire soil pile shall be located within 500 feet of the excavation from which the contaminated soil was removed, or within 1,000 feet of the excavation from which the contaminated soil was removed if the soil is stored on the same property from which it was excavated.

(2) The same contaminated soil shall not be stored for more than 15 days.

(3) All contaminated soil shall be placed on base material impervious to contaminants in the soil and to water, such as concrete, asphalt, plastic sheeting or impervious construction fabrics.

(4) Surface water contact with the contaminated soil shall be prevented, including the construction of berms if necessary, to control surface water movement.

(5) The contaminated soil shall be covered when it is not being moved, with a cover material sufficient to prevent infiltration of precipitation and to inhibit volatilization of soil contaminants.

(l) Requirements for containerized storage. Sites or facilities where responsible parties store up to 2,500 cubic yards of excavated contaminated soil for 6 months or less in containers or in buildings must be operated in accordance with all of the following requirements, and need not comply with the requirements of subsections (a)-(h) and (j):

(1) Containers and buildings shall be designed, constructed and maintained to prevent leakage, infiltration of precipitation and volatilization of soil contaminants to the ambient atmosphere.

(2) Containers shall be labeled and buildings shall have a sign posted in accordance with the requirements of subsection (f).

(3) Contaminated soil may not be stored in containers or buildings for more than 6 months, without the prior written approval of the Agency.

Sec. 500.04. Transportation of contaminated soil excavated during response actions.

Responsible parties may transport excavated contaminated soil in vehicles that they own if the excavated contaminated soil is hauled to a site or facility in compliance with the requirements of this section or to a licensed solid waste storage, treatment or disposal facility, unless as may be otherwise required by the State of Wisconsin and/or the State of Minnesota, as appropriate, for transportation on state highways or off of the Reservation. Responsible parties shall cover contaminated soil, as necessary, so as not to allow the loss of any material during transport.

Sec. 500.05. Treatment of contaminated soil excavated during response actions.

(a) As part of the RI/FS for any brownfield site, the Agency shall prescribe treatment methodologies for any soil or other solid wastes removed from a site. The soil treatment methodologies prescribed for a site shall meet the following requirements:

- (1) Soil treatment methodologies shall not adversely affect human health;
- (2) Soil treatment methodologies shall not adversely affect ground water;
- (3) Soil treatment methodologies shall not adversely affect surface water;
- (4) Soil treatment methodologies shall not adversely affect fish or wildlife;
- (5) Soil treatment methodologies shall not adversely affect a sensitive environment; and
- (6) Soil treatment methodologies shall not adversely affect air quality.

(b) Prohibited locations. Contaminated soil may not be treated at any of the following areas:

- (1) Within a floodplain.
- (2) Within 100 feet of any wetland or critical habitat area.
- (3) Within 300 feet of any navigable river, stream, lake, pond or flowage.
- (4) Within 100 feet of any water supply well for on-site storage or within 300 feet of any water supply well for off-site storage.
- (5) Additional location restrictions may be prescribed by the Agency based on the following factors:

- (A) Waste characteristics and quantities.

(B) The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.

(C) The threat to public health, safety and welfare and the environment.

(D) The type of treatment.

(c) Exemptions from prohibited locations. Contaminated soil may be treated at a location listed in subsection (b) if the Agency has granted a written exemption from that location standard, after considering all of the following:

(1) Waste characteristics and quantities.

(2) The geology and hydrogeology of the area, including information from well logs and well construction records for nearby wells.

(3) The unavailability of other environmentally suitable alternatives.

(4) Compliance with other state and federal regulations.

(5) The threat to public health, safety and welfare and the environment.

(d) The Agency may adopt specific requirements that meet the standards of Sec. 500.05(a) as developed by the Agency, the USEPA, the Wisconsin Department of Natural Resources, or other agencies, associations, or institutions.

Sec. 500.06. Replacement or disposal of treated soil.

(a) As part of the RI/FS for any brownfield site, the Agency shall prescribe treated soil replacement or disposal dispositions for any soil or other solid wastes removed from a site.

(b) The soil replacement or disposal dispositions prescribed for a site shall meet the following requirements:

(1) Soil replacement or disposal dispositions shall not adversely affect human health;

(2) Soil replacement or disposal dispositions shall not adversely affect ground water;

(3) Soil replacement or disposal dispositions shall not adversely affect surface water;

(4) Soil replacement or disposal dispositions shall not adversely affect fish or wildlife;

(5) Soil replacement or disposal dispositions shall not adversely affect a sensitive environment; and

(6) Soil replacement or disposal dispositions shall not adversely affect air quality.

Sec. 600.01. Immediate and interim removal actions.

(a) Scope. Sections 600.01-600.03 apply whenever in the course of performing a brownfields site assessment or characterization under Sec. 300.01 or a brownfields site remedial investigation or feasibility study under Sec. 400.01-400.05 it becomes apparent to the Agency that an immediate or interim removal action may be called for at the site.

(b) Emergency response. If a release is reported or discovered that calls for an emergency response, the Agency shall follow the procedures set forth in the Tribe's Hazardous Material Release Contingency Planning Ordinance and any contingency plans adopted thereunder or in conjunction with a Local Emergency Planning Committee in which the Tribe is a member.

Sec. 600.02. Removal preliminary assessment.

(a) Preliminary assessment factors. In the event of a release or threat of release, or when the Agency has reason to believe that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, the Agency shall conduct a removal preliminary assessment which may include, but is not limited to:

(1) Identification of the source and nature of the release or threat of release;

(2) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health;

(3) Evaluation of the magnitude of the threat;

(4) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(5) Determination of whether the USEPA or another party is undertaking proper response.

(b) Preliminary assessment information. A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted, as appropriate.

(c) Removal site inspection. A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (i.e., off-site) or on-site inspection, taking into consideration whether such inspection can be performed safely. Such inspection may be performed by the Agency, the Tribe's Police Department, the County pursuant to any mutual agreement between the Tribe and the County, or any combination thereof. If the permission of the owner of the site or the person apparently in charge of the site cannot be obtained, the Agency may proceed under Sec. 700.01.

(d) Coordination of efforts. The Agency shall promptly notify the appropriate Federal and, as appropriate, State natural resource and environmental protection agencies, and County law enforcement, public health, and emergency government agencies of potential threats to human health, and the environment resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State agencies.

(e) A removal site evaluation may be terminated when the Agency determines:

(1) There is no release;

(2) The release involves neither a hazardous substance, nor a pollutant or contaminant that may present an imminent and substantial danger to public health or welfare;

(3) The amount, quantity, or concentration released does not warrant response;

(4) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(5) The removal site evaluation is completed.

(f) The results of the removal site evaluation shall be documented.

(g) Any information obtained through a removal site evaluation may be used by the Agency as part of its brownfields site assessment or characterization under Sec. 300.01 or brownfields site remedial investigation or feasibility study under Sec. 400.01–400.05, whether or not that information has indicated that a removal action under sec. 600.03 is required.

Sec. 600.03. Removal actions.

(a) Removal action information.

(1) In determining the appropriate extent of action to be taken in response to a given release, the Agency shall first review the removal site evaluation, any information produced through a brownfields site assessment or characterization under Sec. 300.01 or brownfields site remedial investigation or feasibility study under Sec. 400.01–400.05 and the current site conditions, to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable, to determine whether they can and will perform the necessary removal action promptly and properly.

(b) Removal action factors.

(1) At any release, where the Agency makes the determination, based on the factors in subsection (a), that there is a threat to public health or welfare or the environment, the Agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this section:

(A) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

(B) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(C) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(D) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(E) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(F) Threat of fire or explosion;

(G) The availability of other appropriate federal or state response mechanisms to respond to the release; and

(H) Other situations or factors that may pose threats to public health or welfare or the environment.

(3) If the Agency determines that a removal action is appropriate, actions shall, as appropriate, begin as soon as possible to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare or the environment.

(4) Any removal action undertaken under this section should, to the extent practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.

Sec. 700.01. Enforcement.

(a) Authority

(1) Any duly designated officer, employee, or representative of the Agency, any officer of the Tribe's Police department, and any County officer acting pursuant to agreement with the Tribe, acting together or singly, is authorized to take action under this section at a facility, establishment, place, property, or location or, in the case of subsection (b) or (c), at any facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such subsection (b) or (c). The authority of paragraphs (c) and (d) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this ordinance.

(2) Neither the Agency nor the Police Department nor any employee thereof may be required to perform an inspection or take samples under circumstances which based on information available at the time may reasonably be deemed potentially hazardous, without the proper training and equipment. The Agency or Police Department shall in such circumstances timely notify the USEPA or appropriate state or county agencies of the possible need for an inspection or sampling and of the possible hazards. Neither the Tribe nor any officer or employee thereof shall be liable for failure to perform an inspection or sampling under such circumstances.

(b) Inspection and samples

(1) Authority. Any officer, employee or representative described in subsection (a) is authorized to inspect and obtain samples from any facility, establishment, or other place or property referred to in paragraph (c) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

(2) Samples. If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample, if the officer, employee, or representative is reasonably assured that the owner, operator, tenant, or other person in charge of the place is qualified to care for such sample without endangering any such person or another. The officer, employee, or representative may require the owner, operator, tenant, or other person in charge of the place to sign a release accepting responsibility for the handling of the portion of the sample left with such person. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

(c) Administrative compliance order. If consent is not granted regarding any request made by an officer, employee, or representative under subsection (a) or (b), the Agency may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(d) Enforcement of administrative compliance order. The Agency may ask the Tribal Attorney to commence in Tribal Court a civil action to compel compliance with a request or order referred to in subsections (b) or (c). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

(1) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(3) The court may issue ex parte orders under subsections (d)(1) and (2) if the threat to human health and the environment as it reasonably appears at the time requires the immediate entry of such orders. If the court enters an ex parte order, it shall forthwith schedule and notice a hearing on the order.

(4) The court may assess a civil forfeiture not to exceed \$5,000 for each day of noncompliance against any person who unreasonably fails to comply with the

provisions of subsections (a), (b), or (c), or an order issued pursuant to subsection (d)(1), (2), or (3).

(e) Entry without judicial order. Entry without an order under subsection (d) is allowed if it is not possible to seek an ex parte order under subsection (d)(3) within the time needed to act on the administrative compliance order under subsection (c), given the threat to human health or the environment as it reasonably appears to the Agency at the time of the entry.

Sec. 700.02. Confidential information.

(a) Disclosure. Information obtained pursuant to this ordinance may be disclosed to the public except as the provider of the information has designated as being any of the following types of information: trade secrets, processes, operations, style of work, or apparatus, or identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. Any such designation shall be in writing, and any information so designated shall be submitted to the Agency separately from other information, and shall be clearly so identified. Sensitive cultural information may also be withheld by the Agency from public disclosure.

(b) Requirements for confidential designation. No person required to provide information under this ordinance may claim that the information is entitled to protection under this section unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986 [42 U.S.C. 11001 et seq.], an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other federal, tribal, or state law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

(c) Exclusions. The following information with respect to any hazardous substance at a facility or brownfield site shall not be protected from disclosure under this section:

(1) The trade name, common name, or generic class or category of the hazardous substance.

(2) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.

(3) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

(4) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this section.

(5) The location of disposal of any waste stream.

(6) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

(7) Any hydrogeologic or geologic data.

(8) Any groundwater monitoring data.

(d) Tribal court jurisdiction. The Tribal Court shall have jurisdiction to resolve any claim that information is entitled to protection or subject to disclosure.

(e) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section shall, upon conviction, be subject to a civil forfeiture of not more than \$5,000.

Sec. 700.03. Civil liability.

(a) Persons liable. The following persons are liable for costs and damages as set forth in subsection (b):

(1) The owner and operator of a facility or site where there is or has been a release.

(2) Any person who at the time of a release at any facility or site owned such facility or site.

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other

party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances.

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is or has been a release, or a threatened release of a hazardous substance which causes the incurrence of response costs.

(b) Costs and damages for which liability attaches. Each person identified in subsection (a) shall be jointly and severally liable for the following:

(1) All costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(2) Any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(3) Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(4) The costs of any health assessment or health effects study.

(c) Tribal Court shall have jurisdiction to try and decide any action brought to recover costs and damages under this section.

(d) Interest. Interest shall accrue at the rate set by the Tribal Court Code on any judgment for costs and damages entered under this section from the later of the date payment of a specified amount is demanded in writing, or the date of the expenditure concerned.

(e) No double recovery. No judgment shall be entered for any costs and damages assessed and paid in any other action.

(f) Tribal government. The government of the Tribe and its employees, officers, and agents shall not be liable under this section for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person.

(g) Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights.

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this

section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(h) Application of a registered pesticide product. No person (including the United States or any State or the Tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(i) Obligations or liability pursuant to federally permitted release. Recovery by any person (including the United States or any State or the Tribe) for response costs or damages resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

Sec. 700.04. Defenses.

(a) There shall be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by

(1) An act of God;

(2) An act of war;

(3) An act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against

foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions;

(4) A release or threat of release from real property that was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the property, and one or more of the circumstances described in clause (A), (B), or (C) is also established by the defendant by a preponderance of the evidence:

(A) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

(B) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(C) The defendant acquired the facility by inheritance or bequest.

(5) Any combination of the foregoing paragraphs.

(b) To establish under sec. 700.04(a)(4)(A) that the defendant had no reason to know, the defendant must demonstrate to the tribal court that:

(1) On or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

(2) The defendant took reasonable steps to:

(A) Stop any continuing release;

(B) Prevent any threatened future release; and

(C) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

(c) To establish under 700.04(b)(1) that the defendant carried out all appropriate inquiries, the defendant must comply with any final rule promulgated by the USEPA under 42 U.S.C. §9601(35)(B)(ii), and until such time must comply with the standards and procedures set out in the document of the American Society for Testing and Materials (ASTM), known as "Standard E1527-00", entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

Sec. 700.05. Tribal environmental lien.

(a) The Tribe shall have a lien for all costs and damages for which a person is liable under sec. 700.01 –700.03 against all real property of the person and which is subject to or affected by a removal or remedial action.

(b) The lien arises at the later of the following:

(1) The time costs are first incurred by the Tribe with respect to a response action under this ordinance.

(2) The time that the person referred to in paragraph (a) is provided (by certified or registered mail) written notice of potential liability.

(c) Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of any applicable statute of limitations.

Sec. 700.06. Civil forfeitures.

(a) The Tribal Court may assess a civil forfeiture against any person for any violation of this ordinance in the amount of \$5,000.

(b) For any continuing violation, the Court may assess a civil forfeiture against any person in the amount of \$5,000 per day.

(c) Except as otherwise provided in this ordinance any action for a civil forfeiture may be commenced by the tribal attorney by the filing a statement of claim pursuant to the Tribal Court Code.

Sec. 800.01. Closure of case.

(a) A remedy becomes "operational and functional" either one year after construction is complete, or when the remedy is determined concurrently by USEPA and the Tribe to be functioning properly and is performing as designed, whichever is earlier. The Tribe or USEPA may grant extensions to the one-year period, as appropriate.

(b) Completion of plan. Except as provided in subsection (c), a remediation action plan is considered completed when, no less than 10 years after a remedy becomes operational and functional, the Agency establishes the following:

(1) All ARARs have been met.

(2) All elements of the remedial action plan have been achieved.

(c) Review of 400.07(f) plans. If a remedy is selected under Sec. 400.07(f) that does not meet one or more ARARs, and accordingly results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the Agency shall conduct the five year reviews provided for in Sec. 400.07(l)(2), and shall not consider the remediation action plan completed until a change in implementability or cost factors allows amendment of the remediation action plan and reduction in hazardous substance, pollutants, or contaminant levels so that all ARARs are met.

(d) The agency may propose closure of a case when the remediation plan is considered completed. Before closing any case, the Tribe's EPA shall:

(1) Publish a notice and brief analysis of the proposed closure. The notice and analysis shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed closure, a review of progress made at the site, and the current state of the site.

(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting in or near the community where the site is located, regarding the proposed closure. The comment period shall be at least 30 days. The Agency shall keep a transcript of the meeting and make the transcript available to the public.

(3) Final notice of closure. Notice of the closure shall be published. It shall be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (2).

(4) Publication. Publication required in this section shall be in the publications designated in Sec. 301(g).

Sec. 900.01. Severability, effective date.

(a) If any part of this ordinance is found by a court of competent jurisdiction to be invalid in any way, the remainder hereof shall not be affected and shall remain in full force and effect.

(b) This ordinance shall be effective 30 days from the date of its approval by the Tribal Council.