W.E.E.C. 1200.00 HAZARDOUS SUBSTANCES CODE

W.E.E.C. 1200.00 General Provisions

Subd.1) Short Title. This section of the Environmental Code is known as the Hazardous Substances Code and may be referred to as the Hazardous Substances Code and may be abbreviated as H.S.C.

Subd.2) Statement of Policy.

The beneficial stewardship of the land, air, and waters of the White Earth Reservation is a solemn obligation of the present generation for the benefit of future generations.

Each Person either residing on or doing business within the exterior boundaries of the White Earth Reservation ("Reservation Population") benefits from a healthful environment and each Person has a responsibility to preserve and protect the quality of the Reservation Environment.

The White Earth Reservation Tribal Council, in enacting this Code, is taking action to secure the preservation of life, health, property, and natural resources of the White Earth Nation, its people, and fee and trust lands to protect against the pollution sources that are or may contaminate the air, land surface water and ground water of the Reservation Environment for which existing federal law may not apply.

The main purpose of this Code is to provide remedial law for the cleanup of Hazardous Substances sites and to prevent the creation of future hazards due to improper disposal of Hazardous Substances on or into the Reservation Environment.

Subd.3) Findings. The White Earth Reservation Tribal Council finds and declares as follows:

a) The increasing volume of hazardous waste being generated on the Reservation, and the often inadequate existing methods of managing hazardous waste have the potential to create conditions that threaten the public health, safety and well-being of White Earth citizens by contributing to land, air and water pollution.
b) It is in White Earth's interest to foster, encourage, and promote the development, production, and utilization of natural resources on the Reservation in such a manner as will minimize and properly manage all hazardous waste resulting from such operations and preventing any adverse impacts to public health or the Reservation Environment.
c) The enactment of this code by the White Earth Reservation Tribal Council is in the best interest of ensuring, promoting, and protecting the character of the Reservation and is consistent with previous policy, resolutions and codes enacted for the protection of the Reservation Environment.

Subd.4) Authority. The Authority of the White Earth Reservation Tribal Council to enact this code is found in Article VI, Section 1(c) and (d) of the Revised Constitution and Bylaws of the

Minnesota Chippewa Tribe, and is an expression of the White Earth Nation's inherent sovereign authority.

Subd.5) Definitions. As used in this Code, the following terms shall be ascribed the following meaning:

a) "Brownfields Site" means a site where redevelopment or reuse may be complicated by the presence or potential presence of a Hazardous Substance or Pollutant or Contaminant. It does not include a site or facility that is already subject to remediate or corrective action or is in the process of remediation or corrective action under applicable tribal, federal or state law; a site or facility that is listed or proposed for listing on the National Priorities List under CERCLA (42 U.S.C. § 9601, *et. seq.*); a site or facility subject to RCRA (42 U.S.C. § 6901, *et. seq.*) closure requirements; a site or facility that is the subject of an administrative or court order or consent decree; or any portion of a site or facility already receiving funding for cleanup.
b) "Director" or "White Earth Natural Resources Director" means the Tribal Enforcement Agent responsible for the compliance and enforcement of this Code and the management and administration of the White Earth Natural Resources Division.
c) "Environmental Manager" means the agent responsible for management and administration of the White Earth Environmental Program.
d) "Hazardous Substance" means:
    1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes (A) have short-lived toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.
    2) Any "hazardous waste", defined as any waste which will persist in a hazardous form for three (3) years or more at a disposal site and either (A) Presents a significant environmental hazard which may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or (B) Is toxic to wildlife or people; or (C) Adversely affects living organism in soil, sediment, water, or air. Hazardous waste includes waste disposed of at a disposal site in such quantities as might present a hazard to people or the environment.
    3) Any liquid, solid, gas, or sludge, including any material substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics of dangerous waste or extremely hazardous waste.
    4) Any substance that is a hazardous substance under CERCLA 101(14), 42 U.S.C. § 9601(14) (2012) (or any similar future federal statute), as may from time to time be amended.
    5) Petroleum or petroleum products.
    6) Any substance or category of substances, including solid waste decomposition products, determined by the Director to present a threat to human health or the environment if released into the environment.

7) The term "hazardous substances" does not include, any of the following when contained in an underground storage tank from which there is not a release: crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal laws and the laws and regulations of the White Earth Nation.

e) "Hazardous Substance Release" means any intentional or unintentional entry of any Hazardous Substance into the environment, including but not limited to the abandonment or disposal of containers or Hazardous Substances.

f) "Open Burning" has the same definition given in the Conservation Code.

g) "Open Dumping", for purposes of this Code, means disposing of hazardous waste at any facility or site that does not comply with the requirements of federal or tribal law for hazardous waste disposal.

h) "Person" means any individual, public or private corporation, company, partnership, firm, association or society of people, federal, state, and local governments and any of their programs and agencies, and any Indian tribe, including the White Earth Nation, and any of its agencies, divisions, departments, programs, other political subdivisions, enterprises, and companies.

i) "Pollutant or Contaminant" shall include, but not be limited to:
   1) 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. The term Pollutant or Contaminant shall also include a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802, et. seq.)).
   2) Any Pollutant or Contaminant that may present an imminent and substantial danger to public health or welfare or any Person within the exterior boundaries of the White Earth Reservation.

j) "Potentially Responsible Party" means any Person whom the Natural Resources Department finds, based on credible evidence, to be liable under section 1204.00 of this Code. The Natural Resources Department shall give notice to any such Person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

k) "Responsible Party" means a Person:
   1) Who owned or operated a facility when a Hazardous Substance, or Pollutant or Contaminant, was placed or came to be located in or on the facility; or when a Hazardous Substance, or Pollutant or Contaminant, was located in or on the facility but before the release; or during the time of the release or threatened release of a Hazardous Substance; or
   2) Who owned or possessed a Hazardous Substance, or Pollutant or Contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the Hazardous Substance, or Pollutant or Contaminant; or

3) Who knew or reasonably should have known that the waste the Person accepted for transport to a disposal or treatment facility contained a Hazardous Substance, or Pollutant or Contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.

l) "Tribal Prosecutor" means a legal representative of the White Earth Nation authorized by the Reservation Tribal Council to bring an action in Tribal Court to enforce any provision of this Code. The Tribal Prosecutor may be the regular Tribal Prosecutor or a Special Prosecutor, as the case may be.

W.E.E.C. 1201.00 Amendments

The H.S.C. may be amended by the White Earth Reservation Tribal Council by adopting a resolution stating such changes. Amendments to this Code shall become part of the Code thereafter for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization hereof.

W.E.E.C. 1202.00 Severability

If any provision of this Code is held invalid, the remainder of this Code shall not be affected thereby.

W.E.E.C. 1203.00 Violation of Code

The Director or an authorized representative of the Tribe, may institute proceedings in the White Earth Tribal Court for any appropriate remedies, including but not limited to, injunctive relief, seizure and forfeiture, and the posting of bonds or sureties to insure compliance, against any Person who has violated or failed to comply with any provision of this Code or any regulation, certificate, of order issued pursuant to this Code.

W.E.E.C. 1204.00 Penalties

Subd.1) General Violations. Any Person who violates any provision or amendments of this Code may be assessed a civil penalty by the White Earth Court System of not more than $5,000 for each offense.

Subd.2) Reckless or Intentional Violation. Any Person whose conduct amounts to reckless or intentional violations of any provision or amendment of this Code may be assessed a civil penalty by the White Earth Tribal Court of not less than $5,000 nor more than $15,000 for each offense.

W.E.E.C. 1205.00 Authority of the Natural Resources Director

The foregoing shall not be deemed to limit or restrict the Natural Resources Director or any duly authorized Person(s) from taking other appropriate action, including but not limited to, seizure of

materials, and giving notification to an appropriate Federal, Tribal, State, county or municipal government agency.

W.E.E.C. 1206.00 Court Proceedings

If it appears that any Person violated or failed to comply with any provisions of this Code, the White Earth Reservation and/or those duly authorized to act on its behalf may undertake in their name an action to enforce this Code.

W.E.E.C. 1207.00 Jurisdiction

Subd.1) The applicability of this Code shall extend to all Persons who produce, purchase, transport, handle, store, dispose of Hazardous Substances within the exterior boundaries of the White Earth Reservation.

Subd.2) Any Person who enters within the exterior boundaries of the Reservation shall become subject to this Code and all rules and regulations and applicable orders of the Director, and shall be deemed to have consented to the jurisdiction of the White Earth Tribal Nation, and shall be subject to the jurisdiction of the White Earth Tribal Court for violation of this Code or any applicable rules and regulations and orders of the Director.

W.E.E.C. 1208.00 Judicial Proceeding

Decisions of the authorized representative of the White Earth Natural Resources Department shall be subject to review by the White Earth Tribal Court to the extent permitted or authorized by Tribal law.

W.E.E.C. 1209.00 Sovereign Immunity

Subd.1) Nothing contained in this Code shall be deemed or construed to be a waiver, limitation, or modification of the White Earth Reservation's Sovereign Immunity, and such sovereign immunity is expressly asserted in any action required for the enforcement of this Code.

W.E.E.C. 1210.00 Unlawful Acts

Subd.1) It shall be unlawful for any Person to:

a) Engage in Open Dumping, or otherwise dispose of any waste in a place other than a facility which is in compliance with the H.S.C. and other applicable laws;
b) Dispose of any waste in manner that will endanger public health, safety and welfare, create a public nuisance, or harm the environment;
c) Dispose of any waste including; bulk or non-containerized liquids not defined as solid waste at a solid waste facility or transfer station:

d) Collect, transport, process, or store waste in any manner or at any facility that is not in compliance with the provision of the H.S.C. or any other applicable laws;
e) Fail to report releases of any Hazardous Substance pursuant to W.E.E.C. 1211.00;
f) Refuse to provide information or documentation , grant access, or allow investigations, monitoring, sampling, surveys, testing, or other informational gathering activities to take place pursuant to W.E.E.C. 1212.00;
g) Engage in Open Burning at a transfer station or solid waste landfill facility;
h) Engage in Open Burning at any location other than a transfer station or solid waste landfill facility without a burning permit, as required by the White Earth Reservation Fire and Burning Provisions set forth and approved by Tribal Council Resolution April 7, 1999. and;
i) Engage in Open Burning of materials pursuant to W.E.E.C. 404.00.

Subd.2) A Person seeking to dispose on site, other than through Open Burning, of solid waste generated from a farm, ranch, or camp may petition the Director in writing for an exemption from the prohibition against Open Dumping. The Director shall consider the Person's proximity to a transfer station and whether the on-site disposal will create a public health or environmental hazard. The Director's decision on the petition shall be final and shall not be subject to judicial review. A Person seeking to dispose of such solid waste on site through Open Burning must first apply in writing to the White Earth Forestry Department and must comply with all other applicable provisions of White Earth Law.

Subd.3) Hazardous waste must be disposed of in accordance with all applicable tribal and federal laws and regulations.

W.E.E.C. 1211.00 Release Reporting, Monitoring, and Response Actions

Subd.1) The Responsible Party of a facility shall, as soon as he or she has knowledge of any release (other than a permitted release) of a Hazardous Substance from the facility in quantities equal to or greater than those determined as reportable quantities under CERCLA § 102, 42 U.S.C. § 9602 (2012) (or any future similar federal statute), notify the Environmental Manager of the White Earth Natural Resources Department, within 24 hours of learning of such release. For the purpose of this Code, the reportable quantity of petroleum shall be five gallons or more for release both on the land and into water. Whether a release meets or exceeds a reportable quantity shall be determined based on the amount of the Hazardous Substance Release within a 24- hour period. Such Person shall, upon request of the White Earth Natural Resources Department, provide the White Earth Natural Resources Department with any information he or she has or may obtain relevant to the release or to a threatened release.

Subd.2) Notification need not be given more than annually for a release subject to subdivision 1 of this section when that release is a continuous release, stable in quantity and rate, and notification has already been given for that release pursuant to subdivision 1 for a period sufficient to establish the continuity, quality and regularity of such release. At such time as there is any statistically significant increase in the quantity of any Hazardous Substance or constituent

thereof released above that previously reported, however, notice of any such increase shall be given immediately pursuant to subdivision 1.

Subd.3) Any Person in charge of a facility from which a Hazardous Substance is released, other than a permitted release, in a quantity equal to or great than the reportable quantity defined in subdivision 1 of this section, who fails to notify the White Earth Natural Resources Department pursuant to this section as soon as he or she has actual or constructive knowledge of such release or who submits in such notification any information which he or she know to be false or misleading, shall, upon conviction, be fined in accordance with W.E.E.C. 1204.00.

Subd.4) This section shall not apply to the application of Pesticide or Pesticide Products registered under the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. § 136-136(y) or to the handling and storage of such products by an agricultural producer.

W.E.E.C. 1212.00 Access to Property and Information

Subd.1) Access to Property

a) The Director, or any other officer, employee, agent or representative of the White Earth Reservation duly authorized in writing by the Director, may enter upon any site at reasonable times if there is reason to believe, based on specific and articulable facts, there may be a release or threatened release of a Hazardous Substance.
b) The Director or duly designated officer, employee, agent or representative of the White Earth Reservation may undertake an investigation including but not limited to: monitoring, sampling, surveys, testing, and other information-gathering activities as he or she may deem necessary or appropriate to identify the existence and extent of a release or threatened release, the source and nature of the Hazardous Substances, or pollutants and contaminants involved, and the extent of danger to the public health or welfare or to the environment. If samples are taken before leaving the premises the Director or duly designated officer shall give to the Person in charge of the site from which the samples were obtained a receipt for samples form and, if requested a portion of each sample. Also if requested, a copy of the analytical results or such samples.
c) The Director or any duly designated officer may enter upon a site to undertake activities including planning, legal, fiscal, engineering, architectural, and other studies or investigations as he or she deems necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to implement and enforce the provisions of this Code.

Subd.2) Access to Information

The Director or any other duly designated officer, employee, or representative of the White Earth Reservation may require any Person who may have information relevant to any of the following to furnish, upon reasonable notice, all information or documents relating to such matters or to allow the Director or any other duly designated officer access at all reasonable times to any site to inspect and copy all documents relating to such matters:

a) The identification, nature, and quantity of Hazardous Substances, or pollutants or contaminants, which have been or are generated, treated, stored, transported, or disposed of at a site;
b) The nature or extent of a release or threatened release of a Hazardous Substance at or from a site;
c) Financial information relating to the ability of a Person to pay for and /or to perform a cleanup; and
d) Information relating to compliance with any requirement of this Code or of any regulation, authorization, or order issued pursuant to this Code.

Subd.3) Public Availability of Information
Any reports, records, or other information obtained under subdivision 1 or 2 of this section shall be available to the public, except that upon a showing satisfactory to the Director that records, reports, or information or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets or other confidential information protected under 18 U.S.C. § 1905 (2012) (or any similar future federal statute), the Director shall consider such record, report, information, or portion thereof confidential. Such record, report, information, or portion thereof may nevertheless be disclosed to other officers, employees, or authorized representatives of the White Earth Reservation and of the United States concerned with enforcing this Code or when relevant to any proceeding under this Code. Information required to be made publicly available under CERCLA § 104(e)(7)(F), 42 U.S.C. § 9604(e)(7)(F), is not entitled to protection under this subdivision.

Subd.4) Request for Site Assessment
Any Person who is or may be affected by a release or threatened release of a Hazardous Substance or Pollutant or Contaminant at a Brownfields site located in the community where the Person works or resides may request the Director in writing for a site assessment to be conducted. The Director shall consider any such request and, if the Director finds that such a release or threatened release exists and, in the case of a release of a Pollutant or Contaminant, presents an imminent and substantial endangerment to the public health or welfare or the environment, the Director shall require such site assessment to be performed pursuant to §§ 1213 or 1219, subdivision 1 of this Code or shall perform the site assessment pursuant to subdivision 2 of this section.

W.E.E.C. 1213.00 Response Action Required of a Responsible Party

Subd.1) Whenever there is a release or threatened release of a Hazardous Substance, or a Pollutant or Contaminant, that presents an imminent and substantial endangerment to the public health or welfare or the environment, the Director may order the Responsible Party to investigate, remove or arrange for the removal of, provide for remedial action relating to such Hazardous Substance or Pollutant or Contaminant, or take any other response measure that the Director deems necessary to protect the public health or welfare or the environment. The order shall be in writing and shall state action requested, the reasons for the actions, and a reasonable time for commencing and completing the action, taking into account the urgency of the action for protection of the public health or welfare or the environment.

Subd.2) When a Responsible Party fails to complete a response action or to make reasonable progress in completing a response action order as provided in subdivision 1 of this section, the Tribal Prosecutor may bring an action pursuant to W.E.E.C 1203.00 to compel performance for the requested response action. If any Person having any right, title, or interest in the site where the facility is located or where response actions are proposed to be taken is not a Responsible Party with regard to the release or threatened release, the Person may be joined as an indispensable party in an action to compel performance in order to assure that the requested response action can be taken on the property by the Responsible Party or parties.

Subd.3) Any Responsible Party who fails to take reasonable and necessary response actions or to make reasonable progress in completing response action ordered as provided in subdivision 1 shall be subject to the assessment of a civil penalty pursuant to W.E.E.C.1204.00.

Subd.4) Response actions required under this section shall attain a degree of cleanup and of control of further releases that assures protection of human health and the environment and shall be conducted in accordance with applicable federal and tribal law. In determining the appropriate cleanup standards to be achieved, the Director shall consider the planned future use of the site.

Subd.5) Before requiring a response action under this the section, the Director shall give notice in a newspaper of general circulation in the affected area, identifying the facility, site of concern, parties involved, and providing a brief analysis of the plans that were considered and the basis for the proposed action. The notice also shall be mailed to all potentially responsible parties known at the time of notice. The notice shall provide a reasonable opportunity for the public to submit written comments on the proposed action and an opportunity for a public hearing in the affected area. The Director shall provide a written response to all significant comments submitted on the proposed action.

Subd.6) An Administrative Record shall be established and maintained based on response actions. The Director shall include all items developed and received under Subdivision 5 of this section within the administrative record.

W.E.E.C. 1214.00 Response Actions by Director

Subd.1) Whenever there is a release of substantial threat of release from a facility of any Hazardous Substance, pollutant, or contaminant that presents an imminent and substantial endangerment to public health or welfare or the environment, the Director is authorized to investigate, remove or arrange for the removal of, and provide for remedial action relating to such Hazardous Substance, pollutant, or contaminant in order to protect the public health or welfare or the environment. The Director may take such action when one or more of the following situations exist:

a) A situation requires immediate action by the Director to protect human health and the environment; and
b) No Person is found, within 90 day or such shorter period as may be necessary to protect human health and the environment, who is a Responsible Party with respect to the release or threatened release and who is capable of carrying out such corrective action properly, either financially or otherwise.

c) If a Responsible Party is found, that party has failed to or refused to comply with an order of The Director under W.E.E.C. 1213.00, and is subject to a civil penalty under W.E.E.C. 1204.00.

The Director may use authorities provided in W.E.E.C. 1212.00 to identify the existence and extent of the release or threatened release, the source and nature of the Hazardous Substance or pollutants or contaminants involved, and the extent of danger to public health or welfare or the environment, and may undertake the various planning and other activities identified in W.E.E.C. 1212.00 to plan and direct a response action, recover the cost of a response action, and enforce the provisions of this Code.

Subd.2) The Director shall not provide for a response action under this section in response to a release or threat of release:

a) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found; or
b) into public or private drinking water supplies due to deterioration of the system through ordinary use.

Notwithstanding the limitations identified in this subdivision 2, and to the extent authorized by this section, the Director may respond to any release or threat of release if, in the Director's discretion, it constitutes a public health or environmental emergency and no other Person with the authority and capability to respond to the emergency will do so in a timely manner. In such instance the Director shall provide the public notice required under subdivision 5 of this section but may proceed without waiting to receive all public comments and before holding a public hearing and responding to significant public comments.

Subd.3) No removal or related action taken by any Person shall be construed as an admission of liability for a release or threatened release

Subd.4) Response actions selected under this section or otherwise required or agreed to by the Director under other provisions of this Code shall attain a degree of cleanup, and of control of further releases, that assures protection of human health and the environment and shall be conducted in accordance with applicable federal and tribal law. In determining the appropriate cleanup standards to be achieved, the Director shall consider the planned use of the site.

Subd.5) Before selecting a response action under this section, the Director shall give notice of the proposed action to the public by publication of a notice in a newspaper of general circulation in the affected area, identifying the facility or site concerned and the parties known to the Director at the time of the notice, including all Persons whom the Director contacted pursuant to subdivision 1 of this section. The notice shall provide a reasonable opportunity for the public to submit written comments on the proposed action and an opportunity for a public hearing in the affected area. The Director shall provide a written response to all significant comments submitted on the proposed action.

Subd.6) The Director shall establish an administrative record upon which the Director shall base the selection of the response action. The administrative record shall include all items developed

and received under subdivision 5 of this section, and any other items on which the Director relied in selecting a response action.

Subd.7) Except as otherwise provided in this section, and notwithstanding any other provision or rule of law, any Person who is a Responsible Party with respect to the release or threatened release of a Hazardous Substance is strictly liable, jointly and severally, for the following response cost and damages which result from the release or threatened release or to or from which the release or threatened release significantly contributes:

a) all reasonable and necessary response cost, administrative expenses, and legal expenses incurred by the White Earth Tribal Nation pursuant to this section; and
b) all damages for any injury to, destruction of, or loss of natural and cultural resources, including the reasonable cost of assessing such injury, loss, or destruction.

Subd.8) The cost itemized in paragraph (a), plus interest calculated as provided in 42 U.S.C. § 9607(a), may be recovered in a civil action brought by the Tribal Prosecutor, in the White Earth Tribal Court against any Person who may be liable under this section. The White Earth Natural Resources Department certification of cost shall be *prima facie* evidence that the costs are reasonable and necessary. A Person who conducts a response action under W.E.E.C. 1213.00 also may be liable for response cost under this section, subject to the defenses listed in subdivision 9 of this section.

Subd.9) Defenses

a) There is no liability under this section for response cost or damages that result from the release of a Pollutant or Contaminant that is not a Hazardous Substance.
b) The White Earth Tribal Nation shall not be liable under this section based solely on its ownership of a site where the facility at issue is located or its status as a lessee or grantor of any land use interest, including but not limited to rights-of-way, easements, and land use permits.
c) A Person who accepts only household waste for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any Hazardous Substance unless that Person knew or reasonably should have known that the Hazardous Substance was present in the waste.
d) It is a defense to liability under this section that the release or threatened release was caused solely by:
    1) An act of war;
    2) An act of nature;
    3) An act or vandalism or sabotage; or
    4) An act or omission of a third party of the Potentially Responsible Party, where "third party" does not include an employee or agent of the Potentially Responsible Party, or a Person in the chain of responsibility for the generation, storage, transportation, treatment, or disposal of the Hazardous Substance.

The defenses provide in subparagraphs c and d apply only if the Potentially Responsible Party establishes that the he or she exercised due care with respect to the Hazardous Substance concerned, taking into consideration the characteristics of the Hazardous

Substance in light of all relevant facts and circumstances which he or she knew or should have known, and that he or she took precautions against foreseeable acts or omissions and the consequences that could foreseeable result from those acts or omissions.

e) It is a defense to liability under this section that:
   1) The Hazardous Substance Release was specifically identified in a federal or tribal permit and the release is within the limits allowed in the permit or otherwise conformed with the permit; or
   2) The release was part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or tribal permit and was in compliance with control rules or regulation adopted pursuant to federal or tribal law; or
   3) The release was the introduction of any Hazardous Substance into a publically owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under federal or tribal law; or
   4) Liability has been assumed by the federal post closure liability fund under CERCLA, 42 U.S.C. § 9607(k).
f) It is a defense to liability under this section that, for any injury to, destruction of, or loss of natural or cultural resources:
   1) The natural or cultural resources were specifically identified as an irreversible and irretrievable commitment or resources in an approved final environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license; and
   2) The project or facility was being operated within the terms of its permit or license.
g) It is a defense to liability under this section that the response costs or damages resulted from act taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the Director or WENRD pursuant to this section or in accordance with the national Hazardous Substance response plan under CERCLA, 42 U.S.C § 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a Hazardous Substance.
h) Any Person claiming a defense provided in this subdivision has the burden of proving all elements of the defense by clear and convincing evidence.

W.E.E.C. 1215.00 Contribution

Subd.1) Any Person may seek contribution in the White Earth Tribal Court from any other Person, except the White Earth Tribal Nation, who is liable or potentially liable as a Responsible Party under this Code, during or following any action brought under this Code. In resolving contribution claims, the Court may allocate response cost among liable parties using such equitable factors as the Court determines are appropriate. Nothing in this subdivision shall diminish the right of any Person to bring an action for contribution in the absence of an action being brought under this Code.

Subd.2) Settlement

a) A Person who has resolved its liability in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed

in the settlement. Such settlement does not discharge any of the other potentially liable Persons unless its terms so to provide, but it reduces the potential liability of the other Persons by the amount of the settlement.

b) If the White Earth Nation has obtained less than complete relief from a Person who has resolved its liability to the White Earth Nation in an administrative or judicially approved settlement, the White Earth Nation may bring an action against any Person who has not so resolved its liability.

c) A Person who has resolved its liability to the White Earth Nation for some or all of its response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any Person who is not party to a settlement referred to in paragraph a of this subdivision. In any action under this paragraph c, the rights of any Person who has resolved its liability to the White Earth Nation shall be subordinate to the rights of the White Earth Nation.

Subd.3) Timing of Action for Contribution

No action for contribution for any response cost or damages may be commenced more than three years after:

a) The date of judgment in any action under this Code for recovery of such cost or damages; or

b) The effective date of an administrative settlement or date of entry of a judicially approved settlement with respect to such cost or damages.

W.E.E.C. 1216.00 Voluntary Response Program

Subd.1) Survey and Inventory

The Director shall conduct a survey of Brownfields Sites and potential Brownfields Sites within the exterior boundaries of the White Earth Tribal Nation and shall produce and inventory of such sites that provide an estimated number, likely locations, and general characteristics of the Brownfields sites. The inventory will be updated annually. The inventory shall includes sites that have already undergone screening, evaluation, or response as well as sites that have been identified as having possible releases but have not yet been screened or evaluated. The inventory is intended to serve as an informational tool and is not intended to identify priorities for action.

Subd.2) Site Prioritization

The Director may prioritize sites for cleanup based on the federal Hazard Ranking System or may adopt by rulemaking a process or criteria for determining priorities for cleanup base upon, but not limited to:

a) The relative risk or danger to public health, welfare, or the environment;

b) The damage to natural or cultural resources;

c) The population at risk;

d) The potential for direct human contact;

e) The hazard potential of the Hazardous Substances or the pollutants or contaminants at such sites;

f) The potential for contamination of drinking water supplies;

g) The potential for destruction of sensitive ecosystems;

h) The effect on the human food chain; and
i) The contamination or potential contamination of the ambient air

Subd.3) Public Record of Sites
The Director shall maintain and make available to the public a record of sites that includes the names and locations of sites at which response actions, including voluntary response actions, have been completed in the previous year and at which response actions, including involuntary response actions, are planned to be addressed in the upcoming year. The record also shall identify whether a site, upon completion of the response action, will be suitable for unrestricted use. If not, the record shall identify the institutional controls relied on in the remedy. The record shall be reviewed annually and updated as necessary.

W.E.E.C. 1217.00 Voluntary Cleanup

Subd.1) In General; Protection from Liability
a) *In General.* This section establishes a Voluntary Response Program (also known as a "Brownfields Program") to facilitate the cleanup of contaminated sites within the exterior boundaries of the White Earth Tribal Nation and to encourage the redevelopment and re-use of such sites.
b) *Non-Response Party.* A Person who is not otherwise a Responsible Party under this Code will not become liable for a release or threatened release if the Person undertakes and completes response action to remove or remedy all know releases and threatened releases at a site in accordance with a voluntary response action plan submitted to and approved by the Director under this section. Such Person also will not become liable for any release or threatened releases at the identified site that are not required to be removed or remedied, as long as the requirements of subdivision 2 of this section are met.
c) *Responsible Party.* A Responsible Party may receive liability protection under this section provided that the Responsible Party submits and receives approval for voluntary response action plan that requires remedy or removal of all releases and threatened releases at the site and the Responsible Party receives a certificate of completion under subdivision 7 of this section. When the Director issues the certificate of completion, the Director and the Responsible Party may enter into an agreement the resolves the Responsible Party's future liability under this Code for the release or threatened release addressed by the response actions.
d) *Other People Protected.* The liability protection provided by this section also applies to the following Persons when the Director issues a certificate of completion under subdivision 7 of this section:
    1) When the response action is performed by a non-Responsible Party:
        A) The owner of the site, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;
        B) A Person providing financing to the Person who undertakes and completes the response actions, or who acquires or develops the site; and
        C) A successor or assign of any Person to whom the liability protection applies.
    2) When the response action is performed by a Responsible Party:

A) A Person who acquires the site after approval of the voluntary response action plan;
B) A Person providing financing for response actions or development at the site after approval of the voluntary response action plan, whether the financing is provided to the Person undertaking the response actions or another Person who acquires or develops the property: and
C) A successor or assign of any Person to whom the liability protection applies.

e) *Duty to Exercise Due Care.* Nothing in this section relieves a Person of a liability for failure to exercise due care in performing a response action.

f) *Exclusions.* The liability protection provided by this section does not apply to:
1) A Person who aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan; or
2) A Person who was responsible for a release or threatened release identified in the approved voluntary response action plan before taking an action that would have made the Person subject to the protection under paragraph c or d of this subdivision; or
3) A Person who obtains approval of a voluntary response action plan under this section by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the Person subject to protection under paragraph c or d of this subdivision.

Subd.2) Partial Response Action

a) The Director may approve a voluntary response action plan submitted by a Person who is not a Responsible Party that does not require removal or remedy of all release and threatened releases at a site if the Director determines that all of the following criteria have been met:
1) If reuse or development of the site is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that meets the same standards for protection that apply to response actions taken or ordered under W.E.E.C. 1213.00;
2) The response actions and the activities associated with any reuse or development proposed for the site will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and
3) The owner of the site agrees to cooperate with the Director or other Persons acting at the direction of the Director in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.

b) Under paragraph a, subparagraph 3 of this subdivision, an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:
1) To provide access to the property to the Director and the Director's authorized representatives;

2) To allow the Director, or Persons acting at the direction of the Director, to undertake reasonable and necessary activities at the property, including placement of borings, wells, equipment, and structures on the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment; and
3) To grant easements or other interest in the property to the White Earth Natural Resources Department for any of the purposes provided in subparagraph 1 or 2 of this paragraph.

c) An agreement under paragraph a, subparagraph 3 of this subdivision must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the Director that summarizes the agreement, with the White Earth Land Office.

Subd.3) Eligibility

a) *Site.* Any Brownfields Site is eligible for a response action under this section.
b) *Person.* Any Person is eligible to undertake a response action under this section, according to the provisions herein.

Subd.4) Submission and Approval of Voluntary Response Action Plan

a) *Application.* A Person desiring to participate in the Voluntary Response Program must submit to the Director an application containing information regarding the site in question, its proposed future development, an environmental assessment of the site, a description of the proposed voluntary response action plan, and an application fee, as specified in regulation promulgated under this section.
b) *Assistance from Director.* If the Director approves the application, a voluntary response action plan must be prepared by the applicant and approved by the Director before any work under the plan may begin. The Director may, upon request, assist in or supervise the development and implementation of the voluntary response action plan. Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports.
c) *Fees for Assistance.* A Person requesting assistance under paragraph b of this subdivision shall pay the White Earth Natural Resources Department for the cost, as determined by the Director, of providing assistance. A Tribal Department or other political subdivision of the White Earth Tribal Nation is not required to pay for the White Earth Environmental Department for assistance under this subdivision.
d) *Requirements for an Approval of Voluntary Response Action Plans.* A voluntary response action plan submitted to the Director for approval must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified site. The Director shall not approve the voluntary response action plan unless the Director determines that the nature and extent of the release and threatened release at the site have been adequately identified and evaluated in the investigation report. Response actions required in a voluntary response action plan under this section must meet the same standards for protection that apply to response actions taken or ordered under W.E.E.C. 1213.00, and must comply with all applicable tribal and federal requirements. Before final approval of a voluntary response action plan, the Director must comply with the public

participation requirements in subdivision 9 of this section. The Director may include in the approval an acknowledgement that, upon certification of completion of the response actions as provided in subdivision 7 of this section, the Person submitting the plan will receive the protection from liability provided under this section.

Subd.7) Certification of Completion

a) After remediating the site in question, the Person undertaking the voluntary cleanup must prepare a completion report for review by the Director and, if the Director determines that the approved corrective action plan has been completed, the Director will issue a certificate of completion certifying that the requirements of the plan have been met, and the Person is released from any further liability under tribal law for cleanup of the site and for any contamination identified in the environmental assessment submitted with the application, subject to the provision of subdivision 1 and 2 of this section.
b) Certification of completion of response actions taken under a voluntary response action plan that does not require removal or remedy of all releases and threatened releases is subject to compliance by the owner, and the owner's successors and assigns, with the terms of the agreement required under subdivision 2, paragraph a, subparagraph 3 of this section.

Subd.8) Failure to Complete Response Action

If a Person receiving approval of a voluntary response plan fails or refuses to complete the actions covered by the plan, including operation and maintenance, the Director may require such Person to complete the response action pursuant to § 1213.00 and subchapter 5, may complete the response action and recover cost pursuant to § 1214.00 may refer the matter to the USEPA to pursue under CERCLA, RCRA, or other applicable federal laws, and may take any other action available under tribal or federal law to ensure that the response action will be completed.

Subd.9) Public Participation

Before approving a voluntary response action plan under this section, the Director shall give notice of the proposed plan to the public by publication of a notice in a newspaper of general circulation in the affected area, identifying the site concerned and the parties involved and providing a brief analysis of the plan and the basis for the approval. The notice also shall be mailed to all potentially responsible parties know to the Director at the time of the notice. The notice shall provide a reasonable opportunity for the public to submit written comments on the proposed action and an opportunity from the public to submit written comments on the proposed action and an opportunity for a public hearing in the affected area. The Director shall provide a written response to all significant comments submitted on the proposed plan.

Subd.10) Other Rights and Authorities Not Affected

Nothing in this section affects the authority of the Director to exercise any powers or duties under this Code or any other law with respect to any release or threatened release of a Hazardous Substance or Pollutant or Contaminant or the right of the Director or any other Person to seek any relief available under this Code against any party who is not subject to the liability protection provided under this section.

W.E.E.C. 1218.00 General Enforcement Authority

Subd.1) Whenever, on the basis of any information available to the Director, the Director finds that any Person has violated, or is in violation of, any requirement or prohibition of this Code, the regulations promulgated under this Code, or orders, plans, or fees issued or approved pursuant to this Code, the Director may:

a) Issue and serve on such Person an order requiring the Person to comply with each requirement or come into compliance regarding each prohibition, pursuant to the provisions of this section; and
b) Issue and serve on such Person an administrative penalty order in accordance with W.E.E.C. 1220.00; and
c) Bring a civil action in accordance with W.E.E.C. 1220.00, subdivision 1

W.E.E.C. 1219.00 Administative Orders

Subd.1) The Director may issue an order to a Responsible Party or Potentially Responsible Party to investigate, remove or arrange for the removal of, and provide for remedial action relating to a Hazardous Substance or Pollutant or Contaminant or take any other response measures that the Director deems necessary to protect the public health or welfare or the environment. The Director also may order any Person who is subject to any requirement under this Code to:

a) Establish and maintain records
b) Prepare and submit reports
c) Install, use and maintain monitoring equipment, and use audit procedures or methods;
d) Monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, an in such manner as the Director shall prescribe);
e) Submit compliance certifications; and
f) Provide such other information as the Director may reasonably require.

Subd.2) An order to comply issued under this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to § 1221.00, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director following the hearing. The order may be conditional and require a Person to refrain from particular acts unless certain conditions are met. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply issued under this section shall prevent the Director from assessing any penalties or otherwise affect or limit the Director's authority to enforce any other provisions of this Code, or affect any Person's obligations to comply with any section of this Code or with a term or condition of any plan approved under this Code. Any Person subject to the order may seek judicial review of a final agency determination on the order as provided in § 1225.00.

Subd.3) Emergency Compliance Orders
Notwithstanding any other provisions of this section, the Director (after consultation with the Tribal Attorney, where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat of the public health, welfare, or environment. Any Person issued an order that is effective immediately may file a written request with the Director for a stay pending the outcome of a hearing on the order taken pursuant to § 1221.00. The Director shall, by written notice, grant or deny the request for a stay within five days of receipt of the request. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the White Earth Legal Department but the order shall be effective unless and until the White Earth Tribal Court rules otherwise. Any Person subject to an emergency compliance order may seek judicial review of a final agency determination on the order as provided in § 1225.00.

Subd.4) Enforcement of Compliance Orders
Orders of the Director shall be enforced by the Environmental Department, the White Earth Conservation Department, and the White Earth Natural Resources Department. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

a) Entering upon any property or establishment believed to be violating the order and assisting in compliance;
b) Issuing a cease and desist order on all or part of the operations within the facility.

Subd.5) Injunctive Relief
Notwithstanding any other provisions of this section, the Director may seek injunctive relief pursuant to W.E.E.C. 1222, subdivision 1 to restrain any activity which may endanger or cause damage to public health or welfare or the environment or, in the event of a release or threatened release creating an imminent and substantial threat to the public health or welfare or environment, to require a Person to respond to such release or threatened release.

W.E.E.C. 1220.00 Assessment of Penalties

Subd.1) Basis for Penalty
The Director may issue against any Person an administrative order assessing a civil administrative penalty of up to $5,000 per day per violation whenever the Director finds that a Person has violated, or is in violation of, any provision, requirement or prohibition of this Code, including, but not limited to, a regulation adopted pursuant to this Code, an order issued pursuant to this Code, or a plan approved pursuant to this Code. The Director's authority under this subdivision shall be limited to matters where the total penalty sought does not exceed $50,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and the Tribal Prosecutor jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify, or remit, with or without any conditions, any administrative penalty imposed under this section.

Subd.2) Hearing Requirement
The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing under § 1221.00. Before issuing such an order, the Director shall give written notice of the proposed order to the Person on whom the penalty is to be assessed and provide such Person an opportunity to request a hearing within 30 days of receipt of the notice.

Subd.3) Field Citations
The Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed $5,000 per day per violation may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any Person on whom a field citation is assessed may, pursuant to regulations issued under this section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. If a hearing is requested, the citation shall be treated as an administrative penalty order. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Code if the violation continues.

Subd.4) Judicial Review
Any Person subject to a civil penalty under subdivisions 1 or 3 of this section who obtained a hearing on the penalty under § 1221.00 may seek review of the final agency determination on the penalty in the White Earth Tribal Court by filing a petition for review in such Court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Tribal Prosecutor. Within 30 days thereafter the Director shall file in such Court a certified copy or certified index of the record on which the penalty was based. The Court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this section.

Subd.5) Failure to Pay Penalty
If any Person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Tribal Prosecutor to bring a civil action in the White Earth Tribal Court to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any Person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to reasonable attorneys' fees and costs of collection proceedings. Such Person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be 10% of the aggregate amount of the Person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

Subd.6) Calculation of Penalty

In determining the amount of any penalty to be assessed under this section, the Director or the Court, as appropriate, shall take into consideration the factors enumerated in § 1222.00, subdivision 5.

W.E.E.C. 1221.00 Administrative Hearings

Subd.1) Creation of Environmental Hearing Board
An Environmental Hearing Board is hereby created and shall be composed of three directors or Managers, two from the White Earth Natural Resources Department and one from a different White Earth health-related department or program. At least one of the Hearing Board Members must be a White Earth enrolled member. A director or manager may not serve on the Board regarding any matter in which he or she has a financial interest or when he or she has a relationship with a party or with the subject matter that would make it inappropriate for him or her to act.

Subd.2) Procedural hearings required under this Code shall be informal hearings not subject to requirements under this section.

W.E.E.C. 1222.00 Judicial Enforcement

Subd.1) Civil Judicial Enforcement
The Director may request the Tribal Prosecutor to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in an amount per day per violation not to exceed $25,000, in any of the following instances:

a) whenever a Person has violated, or is in violation of, any provision, requirement or prohibition of this Code, including, but not limited to, a regulation adopted pursuant to this Code or an order issued pursuant to this Code;
b) whenever a Person has violated, or is in violation of, any duty to allow or carry out inspection, entry, or monitoring activities; and
c) whenever an activity exists that may endanger or cause damage to the public health or welfare or the environment, in which case the Director shall request the Tribal Prosecutor to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in paragraphs a and b of this subdivision.

Subd.2) Suits for Costs
In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with a proceeding brought under this Code, for any damages caused to the lands or other resources of the White Earth Nation as the result of any violation of this Code, including for payment of costs related to all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of the matter, and for the reasonable value of the attorney time and expenses associated with such proceedings.

Subd.3). Jurisdiction and Venue

Any action under this section shall be brought in the White Earth Tribal Court, and such Court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the White Earth Nation under this Code, and award any other appropriate relief.

Subd. 4) Calculation of Penalties; Notice

a) For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section or § 1220.00, if the Director has notified the source in writing of the violation and a *prima facie* showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice, and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in White Earth Tribal Court that alleges any violation described in subdivision 1 of this section.
b) In determining the amount of a civil penalty assessed under this section, the Court shall consider the history, seriousness, and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator(s) full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the Court deems relevant. The Court may assess penalties for noncompliance with actions under subchapter 3 where the violator does not have sufficient cause to violate or fail or refuse to comply with such action.
c) All penalties collected pursuant to this section shall be deposited in the account established pursuant to § 1205.00, subdivision 3.
d) In lieu of or in addition to a monetary penalty, the Director may impose or may request the Tribal Prosecutor to seek from the Court a requirement to remediate the damage caused or to perform community service, or both.

Subd.5) Security

The White Earth Tribal Court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

Subd.6) Enforcement of Judgments

All judgments entered under this section and §§ 1219.00 and 1220.00 may be enforced by execution, levy, sale, redemption, garnishment, and contempt pursuant to the White Earth Band of Chippewa Judicial Code.

W.E.E.C. 1223.00 Citizen Suits

Subd.1) Authority to Bring Civil Action; Jurisdiction

a) Except as provided in subdivision 2 of this section, a Person may commence a civil action in the White Earth Tribal Court on his own behalf against any Person (except the White Earth Tribal Nation or any instrumentality of the White Earth Tribal Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Code, including but not limited to a regulation adopted pursuant to this Code or an order issued under this Code.
b) The White Earth Tribal Court shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, or order, to order such Person to take such other action as may be necessary, and to apply any appropriate civil penalties.

Subd.2) Notice
An action may not be commenced under subdivision 1 of this section fewer than 60 days after the Person bringing the claim has given notice of the alleged violation to the Director, the Tribal Prosecutor and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative action or a civil action in Court to require compliance with this Code, except that any Person may intervene as a matter of right in an action filed with the White Earth Tribal Court

Subd.3) Intervention; Service of Complaint
a) The Director, if not already a party, may intervene as a matter of right in any action brought under this section.
b) Whenever an action is brought under this section the Person bringing the claim shall serve a copy of the complaint on the Tribal Prosecutor and on the Director. In an action brought under this section in which the Director is not a party, no consent judgment may be entered prior to 45 days following the receipt of a copy of the proposed consent judgment by the Tribal Prosecutor and the Director, during which time the Tribal Prosecutor and the Director may submit, on behalf of the White Earth Tribal Nation, their comments on the proposed consent judgment to the White Earth Tribal Court and parties or the Director may intervene as a matter of right.

Subd.4) Award of Costs
The Court, in issuing a final order in an action brought under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the Court determines that such award is appropriate. The Court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

Subd.5) Penalty Fund
Penalties received under this section shall be deposited in the account established pursuant to § 1205.00, subdivision 3.

W.E.E.C. 1224.00 Rulemaking

Subd.1) Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the White Earth Tribal Nation that are concerned. The notice shall specify the period available for public comment; the date, time and place of any public hearing; and the location of a copy of the proposed regulation that is available to the public for review.

Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any Person to submit written comments, data, or documentary information; give interested Persons an opportunity to present orally their views, data, or arguments; and keep the docket open for 20 calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

Subd.2) The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

W.E.E.C. 1225.00 Review in the White Earth Tribal Court

Subd.1) Petitions for Review
Any final action taken by the Director under this Code, including but not limited to promulgation of regulations and standards, issuance of orders, issuance and denial of permits, and imposition of administrative penalties, is subject to review in the White Earth Tribal Court. Any such petition for review (except for petitions for review of administrative penalties imposed under § 1220.00, which are subject to review under § 1220.00, subdivision 4) shall be brought in the White Earth Tribal Court. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other Person required to be served under this Code, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise.

Subd.2) Limited Waiver of Sovereign Immunity
The White Earth Tribal Nation consents to the judicial review provided for in this section. This consent to jurisdiction shall be construed as a limited waiver of the White Earth Tribal Nation's sovereign immunity from suit only to the extent necessary to enforce this Code. This limited waiver shall not extend to any action initiated pursuant to § 1223. All other rights, privileges and immunities of the White Earth Tribal Nation are hereby expressly asserted or reserved to the Nation.

Subd.3) Limitations on Review

a) If judicial review of a final action of the Director could have been obtained under subdivision 1 of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.
b) With respect to any regulations promulgated under this Code, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the Person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the

same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the Person may seek review of such refusal in the White Earth Tribal Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the Court for up to three months, at the discretion of either the Director or the Court.

c) Except as otherwise expressly allowed by tribal law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Code. In reviewing alleged procedural errors, the Court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulations that there is a substantial likelihood that the regulations would have been significantly changed if such errors had not been made.

Subd.4) Standards for Review

In reviewing any final action of the Director undertaken pursuant to this Code, the Court may reverse any such action that it finds to be:

a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law; or
b) In excess of statutory jurisdiction, authority, or limitations or short of statutory right; or
c) Without observance of procedure required by law; or
d) Unsupported by substantial evidence.

WHITE EARTH RESERVATION TRIBAL COUNCIL
A/K/A WHITE EARTH BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS

Resolution No. 057-15-002

WHEREAS, the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1, of the Revised Constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (18 Stat. 984), and

WHEREAS, the White Earth Reservation Tribal Council, also known as the White Earth Reservation Business Committee, is the duly authorized governing body of the White Earth Band, and

WHEREAS, the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation and is organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984) as amended and pursuant to the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, and

WHEREAS, the White Earth Reservation Tribal Council has established the Natural Resources Department, which consists of: Conservation/Enforcement, Environmental Affairs, Water Quality, Cultural Resources/Archives, Forestry, Land Office, Zoning, Fisheries, Wildlife, Wild Rice and Agriculture, and Pesticides/Emergency Management, and

WHEREAS, it is the intent of the White Earth Reservation Tribal Council to effectively, efficiently and properly manage the natural resources of the Reservation, and

WHEREAS, the White Earth Reservation Tribal Council adopted an Environmental Code on January 31, 2011, pursuant to RTC Resolution No. 057-11-001, which provided for the protection, management, enforcement and enhancement of all Natural Resources within the reservation boundaries, and

WHEREAS, the White Earth Reservation Hazardous Substances Code provides an amendment to the Environmental Code that will further and enhance the Reservation Tribal Council's goal of effectively, efficiently and properly managing the Reservation's natural resources.

THEREFORE, BE IT RESOLVED, that the White Earth Reservation Tribal Council does hereby adopt the White Earth Reservation, Hazardous Substance Code as Chapter 12 of the White Earth Reservation, Environmental Code for the effective management and enforcement of hazardous substances within the Reservation boundaries, and that the Hazardous Substance Code will be effective January 1, 2015.

We do hereby certify that the foregoing resolution was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Tribal Council held on November 24, 2014 in White Earth, Minnesota.

Erma Vizenor

Erma Vizenor, Chairwoman

Tara Mason

Tara Mason, Secretary-Treasurer