

**Title XLI
(41)
TRIBAL EMERGENCY RESPONSE
COMMISSION (TERC)**

Standing Rock Sioux Tribal Code of Justice



RESOLUTION NO. 487-18

Approved December 4, 2018

by

Standing Rock Sioux Tribal Council

RESOLUTION NO. 487-18

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a), (b), (c), (h) and (j), is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, to promote and protect the health, education and general welfare of the members of the Tribe, and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to manage, protect, and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

WHEREAS, the Federal Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. §§11001-11050, prescribes an integrated structure for the organization of federal and Tribal emergency planning in Indian Country, for the identification of hazardous substances stored or used in our communities, and for the preparation of response activities in the event of release of oil or hazardous chemicals; and

WHEREAS, the Environmental Protection Agency regulations (55 Fed. Reg. 30644-30645) outline the process for the Tribal Chairperson to appoint a Tribal Emergency Response Commission (TERC), for the purpose of implementing EPCRA and addressing threats posed by the release of oil or other hazardous substances with the exterior boundaries of the Reservation; and

WHEREAS, the purpose of the TERC is to develop and maintain an inventory of chemicals stored or used, and a process for emergency notification of and response to chemical accidents and releases; and

WHEREAS, the Tribal Chairman, in compliance with the requirements of EPCRA and the implementing regulations of the EPA, has appointed a TERC pursuant to Resolution No 487-18, in order to improve the management of hazardous substances and toxic chemicals within the exterior boundaries of the Standing Rock Indian Reservation, and to develop and implement plans for emergency response in the event of a release of oil or other hazardous substances or toxic chemicals; and

WHEREAS, the TERC shall establish effective mechanisms for chemical emergency prevention, preparedness and response, in order to protect public health and welfare and the environment on the Standing Rock Indian Reservation; and

WHEREAS, the TERC shall establish requirements and procedures for the dissemination of information to the general public regarding the presence and use of hazardous chemicals in and near our Reservation communities, and shall obtain public comment on Tribal emergency response plans; and

WHEREAS, the TERC adopted a motion recommending enactment of the Chemical Emergency Planning and Standing Rock Sioux Tribe Right-to-know Ordinance, and the Judicial Committee has recommended the same.

NOW THEREFORE BE IT ENACTED, the Standing Rock Sioux Tribe Emergency Planning and Community Right-to-Know Ordinance, codified as Title XLI of the Standing Rock Sioux Tribe of Justice;


BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.


CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members, of whom 14 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 4th day of December, 2018, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 3 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 4TH DAY OF DECEMBER, 2018.

ATTEST:


Susan Agard, Secretary
Standing Rock Sioux Tribe


Mike Fair, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]



Meeting Date:
12-4-18 #21

TITLE XLI

**STANDING ROCK SIOUX TRIBE EMERGENCY PLANNING
AND COMMUNITY RIGHT-TO-KNOW ORDINANCE**

Part 100—TITLE, PURPOSE AND DEFINITIONS

SECTION 101 TITLE

Title XLI of the Standing Rock Sioux Tribe Code of Justice shall be called the Standing Rock Sioux Tribe Emergency Planning Community Right-to-Know Ordinance.

SECTION 102 FINDINGS AND PURPOSE

A. The Standing Rock Sioux Tribal Council hereby finds:

1. The enactment of the Emergency Planning and Community Right-to-Know Ordinance is an act of the inherent sovereignty of the Standing Rock Sioux Tribe, as a constituent band of the Great Sioux Nation, with sovereignty recognized by the United States in the Fort Laramie Treaty of 1851 and Fort Laramie Treaty of 1868.

2. The storage, use and transportation of oil, hazardous substances and toxic chemicals on and near the Standing Rock Indian Reservation threatens and substantially impacts the health and welfare of Tribal members and the political integrity and economic security of the Standing Rock Sioux Tribe.

B. The purposes of this Ordinance are to:

1. Establish mechanisms for chemical emergency prevention, preparedness, response and mitigation.

2. Authorize the development and implementation of chemical emergency response plans for the protection of the Standing Rock Sioux Tribe and the environment.

3. Establish requirements and procedures for dissemination of information to the general public regarding the presence and use of hazardous chemicals in the Standing Rock Sioux Tribe and for related purposes.

4. Establish an Emergency Response Commission to serve as an advisory body.

SECTION 103

DEFINITIONS

- A. In this ordinance, the following definitions, unless otherwise provided, apply:
1. **Administrator** means the Administrator of the United States Environmental Protection Agency or his or her designee.
 2. **Advisory Body** means the entity identified in this Ordinance
 3. **CAS number** means the Chemical Abstract Service number assigned to a chemical or substance.
 4. **CFR** means the United States Code of Federal Regulations.
 5. **Chemical Emergency Response Plan** means the plan prepared by and annually reviewed by the TERC.
 6. **Coordinator of Information** means the person designated to serve as the contact person for communications.
 7. **District** means or refers to one of the eight (8) political subdivisions into which the Standing Rock Sioux Tribe is organized pursuant to Article III, section 2 of the Constitution and Bylaws of the Standing Rock Sioux Tribe
 8. **Emergency Operations Center (EOC)** means the designated location from which incident management support activities necessitated by response to an actual or threatened natural and/or technological incident are coordinated. Activation shall be at the direction of the Standing Rock Sioux Tribal Chairman through the Office of Emergency Management, Coordinator or designee or upon the request of the Incident Commander.
 9. **Emergency Planning District or EPD** means an emergency planning/response area designated by the TERC Commission pursuant to section 302 of this Ordinance.
 10. **EPA** means the United States Environmental Protection Agency.
 11. **EPCRA** means the Emergency Planning and Community Right-to-Know Act of 1986 and shall be considered synonymous with Public Law (P.L.) 99-499, SARA Title III, and the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. §§ 11000 *et seq.*).
 12. **Environmental Quality Commission (“EQC”)** means the Commission

established in SRST Code of Justice 29-102.

13. **Extremely Hazardous Substance** means a substance listed by the EPA in 40 CFR Part 355 App. A & B, or identified by regulation of the EQC.
14. **Facility** means any building, equipment, structure or other stationary item located on a single site or on contiguous or adjacent sites which sites are owned or operated by the same person (or by any person which controls, is controlled by or under common control with such person). Such term shall additionally refer to motor vehicles, rolling stock and aircraft when related to emergency notification requirements arising from section 402 of this Ordinance.
15. **Facility Chemical Emergency Response Plan** means a plan prepared and made available by a facility that outlines effective prevention and response in the event of a Reportable Quantity Release from that facility.
16. **Facility Emergency Coordinator** means the individual designated by a facility to act as the Facility Contact Person.
17. **Fire Department** means the Standing Rock Sioux Tribe Structural Fire Department (Volunteer) or BIA Fire Department, or the Standing Rock "Strike Team" as developed.
18. **Hazards analysis** means analysis prepared pursuant to the *Technical Guidance for Hazards Analysis - Emergency Planning for Extremely Hazardous Substances*, prepared by the U.S. Environmental Protection Agency, Federal Emergency Management Agency, U.S. Department of Transportation and dated December 1987, or a publication issued to supersede such document, or a document, electronic program or procedure approved by the TERC for use by a facility that is subject to chemical emergency planning requirements.
19. **Hazardous Chemical** means a chemical defined under 29 C.F.R. § 1910.1200(c) of (the OSHA Hazard Communication Standard). As used in this ordinance, the term includes but is not limited to specific groupings of chemicals such as extremely hazardous substances, hazardous substances, highly hazardous chemicals, hazardous air pollutants, regulated substances and toxic chemicals. For purposes of the Standing Rock Sioux Tribe EPCRA program, unless more stringent Standing Rock Sioux Tribe or Federal requirements apply, the exemptions listed in 29 C.F.R. § 1910.1200 b(6)iii through viii shall apply.
20. **Hazardous Substance** means a substance on the list defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601(14).

21. **Landowner or Lessor** means an individual, a group of individuals, or the Standing Rock Sioux Tribe, or whoever is the owner or lessor of a tract of land within the exterior boundaries of the Standing Rock Indian Reservation. This term shall include land held in trust for Indians by the United States Government, and land whose title is held in fee simple.
22. **Legal Counsel** means the Standing Rock In House Legal Counsel or his or her authorized representative.
23. **Lists of Lists** refers to the CONSOLIDATED LIST OF CHEMICALS SUBJECT TO THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA), COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA) AND SECTION 112(R) OF THE CLEAN AIR ACT, EPA publication 550-B-001 (March 2015) and its successor publications.
24. **Manufacture** means to produce, prepare, import or compound a hazardous chemical.
25. **Material Safety Data Sheet** or **MSDS** means the chemical information sheet developed pursuant to the regulations of the Occupational Health and Safety Administration (OSHA) at 29 C.F.R. § 1910.1200 (g).
26. **Office of Emergency Management** means the office that provides the necessary direction, coordination, guidance, and assistance so that a comprehensive emergency preparedness system exists for all hazards, in all phases of emergency management (mitigation, preparedness, response, and recovery).
27. **OSHA** means the Occupational Safety and Health Administration Act, authorized in 29 U.S.C. § 651 *et seq.*
28. **Operator** means the person responsible for the overall operation of a facility.
29. **Owner** means the person who owns a facility or part of a facility.
30. **Person** means an individual, trust, firm, joint stock company, corporation (Including governmental instrumentalities and corporations chartered pursuant to the law of any jurisdiction), municipality, commission, political subdivision of the State of North or the State of South Dakota
31. **Process** means the preparation of a hazardous chemical after its manufacture for distribution in commerce either:
 - a. In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the

chemical; or

- b. As part of an article containing a hazardous chemical.
32. **Region VIII** means Region VIII of the EPA.
 33. **Regulated Substance** means a chemical regulated under sections 112 (r) and 301 of the Clean Air Act, as amended, 42 U.S.C. §§ 7412 (r), 7601, and the regulations promulgated thereunder, including 40 C.F.R. Part 9 and 68.
 34. **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) of any hazardous or extremely hazardous substance.
 31. ~~which on a Reportable Quantity (RQ) list as a hazardous substance~~
 35. **Residential user** means any individual, single/multiple family dwelling residing within the exterior boundaries of the Standing Rock Sioux Tribe.
 36. **Reservation** means the “Standing Rock Sioux Indian Reservation,” comprising the portion of the Great Sioux Reservation, established in the Treaty of Fort Laramie of April 29, 1868 (15 Stat. 635), set aside for the Hunkpapa, Sicasu and Yanktonai bands, and the land identified in the Executive Order of March 16, 1875, as described in the Act of March 2, 1889 (25 Stat. 888).
 37. **Standing Rock Sioux Tribe** means the Standing Rock Sioux Tribe of the Great Sioux Nation, including its departments and governmental service agencies.
 38. **TERC** means the Standing Rock Sioux Tribal Emergency Response Commission appointed by the Tribal Chairman of the Standing Rock Sioux Tribe and authorized to implement EPCRA.
 39. **Threshold Planning Quantity** means a chemical designated as an extremely hazardous substance by Title III of the Superfund Amendments and Reauthorization Act, the inventory amount at a facility that results in a requirement for the material to be reported by the facility and be included in the emergency response plan for chemical spills or releases
 40. **Tier Two** means and refers to the requirements of subsection 312 (d)(2) of EPCRA and the requirements of section 402 of this Ordinance.
 41. **Title III** means Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, Emergency Planning and Standing Rock Sioux Tribe Right-to-Know Act of 1986, Title 42 of the United States Code, ("SARA") and regulations issued thereunder, which provisions are herein incorporated by

reference.

42. **Toxic Chemical** means a substance listed by the Administrator pursuant to Section 313(c) of Title III and listed at 40 C.F.R. § 372.65, or a superseding regulatory provision, ~~and~~/or published in the EPA's annual Toxic Release Inventory Reporting Instruction Package.
 43. **Trade Secret** shall have the meaning effected under the provisions of Section 319 of EPCRA.
 44. **Tribal Council** means the Tribal Council of the Standing Rock Sioux Tribe, the legislative branch of the Tribal government.
 45. **USC** means the United States Code.
- B. References to any provision of federal law or regulation contained herein shall be understood to include, by reference, any and all subsequent revisions to such provision or regulation.

Part 200 EMERGENCY PLANNING REPORTING REQUIREMENTS

SECTION 201 HAZARDOUS CHEMICALS, THRESHOLDS AND MINIMUM REPORTING THRESHOLDS ESTABLISHED UNDER TRIBAL LAW; DUTY TO REPORT

- A. The Environmental Quality Commission shall establish minimum reporting requirements for any hazardous chemical used or stored on land within the exterior boundaries of the Standing Rock Indian Reservation. The EQC may establish minimums for reporting thresholds that are more stringent than the thresholds established by the Administrator. The EQC may not establish thresholds that are less stringent than those of the Administrator. The EQC and TERC shall maintain and publish such decisions as well as those decisions resulting from actions under section 701 of this Ordinance.
- B. The EQC shall make available a list of adjusted hazardous chemical thresholds and quantities.
- C. An owner or operator of a facility shall be responsible for compliance with the requirements established by the Standing Rock Sioux Tribe including all requirements ~~in~~ of this Ordinance and its implementing regulations.
- D. The owner and operator of a facility subject to the provisions of this Ordinance shall be jointly and severally liable for any failure to comply with the provisions of this

Ordinance.

- E. Nothing in this Ordinance shall lessen the obligations or liabilities of any person under federal law.

Part 300 CHEMICAL EMERGENCY PREPAREDNESS AND RESPONSE

SECTION 301 STANDING ROCK SIOUX TRIBAL EMERGENCY RESPONSE COMMISSION (TERC); ADVISORY BODY; POWERS AND DUTIES

- A. The Tribal Chairperson is authorized and directed to establish the Standing Rock Sioux Tribal Emergency Response Commission (TERC). The Commission shall consist of the following voting members:
 - 1. A Chairperson, appointed by the Tribal Chairperson, who may be selected from subsection 2 below and;
 - 2. The directors, or their designees, of the:
 - a. Standing Rock Sioux Tribe Water Resources Administrator
 - b. Department of Environmental Protection Agency (EPA)
 - c. Department of Tribal Health; EMS.
 - d. Department of Tribal Transportation/Roads Department
 - e. Fire Department; Standing Rock Structural and BIA Wild Land Fire
 - f. Standing Rock Game and Fish Department
 - g. Tribal Law Enforcement; and Tribal Emergency Response Management
 - h. A representative of each District who shall serve as a Standing Rock Sioux Tribe At-Large member. The Standing Rock Sioux Tribe-at-Large members shall be selected by the District they represent, according to a process of the District's own choosing and the representative shall be confirmed by the Tribal Chairman. An alternate shall also be selected by each District to serve in the absence of the Representative.
 - j. Standing Rock Sioux Tribal members with professional experience in the areas of medicine, law enforcement, firefighting, civil defense, first aid,

health, environmental protection and hospital administration, as may be available to serve on the TERC.

- B. The Commission shall exercise planning and oversight functions.
- C. Subject to available funding, the Department of Emergency Management may provide administrative support and exercise the enforcement authority necessary for the effective implementation of the provisions of this Ordinance.
- D. TERC and Advisory Body members may receive prepaid or reimbursed payment for travel and out-of-pocket expenses incurred in relation to specific Commission approved activities provided such prepayment or reimbursement is not otherwise payable or reimbursable from funds of the agency at which such member is employed. Subject to funding, the TERC may pay for other pre-approved Standing Rock Sioux Tribe agencies training travel requests.
- E. This section constitutes a delegation of the authority of the Chief Executive Officer to designate facilities that must comply with the reporting requirements of this Ordinance and to implement the requirements of this Ordinance and EPCRA to the TERC, for all land within the exterior boundaries of the Standing Rock Indian Reservation.
- F. The TERC shall adopt its own rules of order. Such rules shall address the requirements contained in the provisions of this Ordinance, including but not limited to:
 - 1. The adoption of rules, policies, procedures and guidelines and provision for the modification, suspension and repeal of such rules and policies. The authority to adopt rules, policies, procedures and guidelines includes a duty to:
 - a. Appoint a Coordinator for Information. The EPCRA Coordinator will serve as the coordinator of information unless the TERC takes formal action to appoint another person; and
 - b. Establish procedures for receiving and processing public information and requests.
 - 2. Provide for the establishment of meeting places and times as often as necessary to implement EPCRA and the provisions of this Ordinance.
 - 3. Establish and maintain a repository for information submitted pursuant to this ordinance, and provide public notice regarding the location where information obtained pursuant to this ordinance is maintained, and the hours, consistent with normal working hours, during which such information shall be available.
 - 4. Establish committees of TERC members, as deemed necessary.

- G. An Advisory Body shall be established to provide technical assistance to the TERC. The Advisory Body shall be appointed by the TERC and shall consist of representatives from the following entities:
1. Facility owners/operators subject to the requirements of this Ordinance, as deemed appropriate by the TERC;
 2. Standing Rock Sioux Tribe Emergency Medical Services;
 3. Standing Rock Sioux Tribe Environmental Health Program;
 4. Standing Rock Sioux Tribe Health Care, and Facilities Management;
 5. Standing Rock Sioux Tribe Housing Authority;
 6. Standing Rock Sioux Tribe Legal Office;
 7. Standing Rock Sioux Tribe Public Relations Office;
 8. Standing Rock Sioux Tribe Game and Fish Rangers; and
 9. Land Operations, United States Department of the Interior, Bureau of Indian Affairs, Standing Rock Agency;
- H. Subject to the availability of funds, the TERC may:
1. Consistent with Standing Rock Sioux Tribe Financial Management Policy and Procedures, procure by contract the temporary or intermittent services of experts or consultants provided such services are to be performed on a part-time or fee-for-services basis. Subject to Tribal Council approval, the Standing Rock Sioux Tribe on behalf of TERC may enter into memoranda of agreement with other jurisdictions and political subdivisions to implement requirements of this ordinance.
 2. Establish a program of financial grants to the Districts for the development of local implementation of this ordinance. The TERC shall address in its rules or policies procedures for applying for the grants and qualifying criteria for such grants. The Department of Emergency Management shall provide technical support for the administration of grants awarded pursuant to this provision.
- I. The TERC may apply for any reimbursement, grant or gift that may become available and that supports the provisions of this ordinance. Such reimbursement, grants or gifts shall be in the Standing Rock Sioux Tribe's name, and where a signature is required to obligate

6. Procedures providing reliable, effective and timely notification by the Director of the Tribal Emergency Management Program to persons designated in the emergency plan, and to the public, that a release has occurred.
 7. Methods for verifying the occurrence of a release and the area and population likely to be affected.
 8. A description of emergency equipment and facilities at each facility on the Reservation subject to this Ordinance.
 9. Specialized equipment, facilities, personnel and emergency response organizations available in the EPD to respond to releases; and
 10. Mutual aid agreements with other EPDs, and the allocation of emergency response resources for responding to releases, if applicable.
 11. Evacuation plans.
 12. Training programs and emergency exercises.
- B. The Standing Rock Sioux Tribe may enter into intergovernmental agreements with the state of North and South Dakota and/or its political subdivisions or other jurisdictions to fulfill the provisions of this Section and to facilitate the implementation of this Ordinance.
- C. The TERC shall provide for public notification of TERC activities that include:
1. Annual publication of emergency response plans,
 2. Material Safety Data Sheets/chemical lists,
 3. Tier Two Hazardous Chemical Inventory Forms,
 4. Toxic Chemical Release Inventory Forms and follow-up emergency reports.
- D. The documents identified in subsections a.-d., above, shall be available for public review during normal work hours.
- E. Coordination and Scheduling of Public Meetings
- The TERC shall:
1. Receive and process public comments and the response to such comments with

respect to information available pursuant to Section 302B of this ordinance.

2. Prepare, distribute and review of a chemical emergency response plan. Chemical emergency response plans may be based on information obtained from:
 - a. The Directors of the Emergency Management Program, DER/EPA and other agencies of the Standing Rock Sioux Tribe.
 - b. The State of North and South Dakota and subdivisions of the state of North and South Dakota and
 - c. Facilities subject to this ordinance and EPCRA.

F. Chemical emergency response plans shall include:

1. The identification of the heads of the Standing Rock Sioux Tribe emergency response organizations for designated areas or District officials responsible to make determinations necessary to implement the chemical emergency response plan. Unless otherwise specifically stated, the plan is considered implemented when there is a public response by the Fire Department to an incident involving hazardous materials.
2. Specialized equipment, facilities, personnel and emergency response organizations available to respond to releases; and
3. Mutual aid agreements with other EPDs, and the allocation of emergency response resources for responding to releases, if applicable.
4. Plans developed under this Ordinance shall be submitted to the Fire Department, Tribal Volunteer Fire Department and BIA Fire.
5. There shall be annual testing and evaluation of the chemical emergency response plan.

G. The TERC shall advise the Standing Rock Sioux Tribe Council as follows:

1. An evaluation of resources necessary to develop, implement and exercise the emergency response plan in its EPD.
2. Projections regarding additional resources necessary in future years for the effective implementation of the provisions of this Ordinance; and
3. Suggested means for providing such additional resources.

4. Other issues relating to emergency planning and response.

SECTION 303 FACILITY REPORTING REQUIREMENTS

- A. A facility within the exterior boundaries of the Standing Rock Indian Reservation is subject to the reporting and notification requirements of this Ordinance if the following is present at the facility in the quantity identified:
 1. *Extremely hazardous chemicals* – An extremely hazardous chemical, as defined by EPA in 40 CFR Part 55 App. A & B, is present at the facility in the amount of:
 - a. 500 lbs (227 kg), or
 - b. the Threshold Planning Quantity (TPQ) established by EPA in 40 CFR Part 355 App. A & B,whichever is less.
 2. *Hazardous chemicals* – A hazardous chemical, as defined by the Occupational Health and Safety Administration in 29 CFR 1910.1200(c), and for which OSHA requires preparation of an MSDS, in the amount of:
 - a. the TPQ established by EPA in 40 CFR §370.10(a)(2); or
 - b. for substances listed by EPA as hazardous substances under CERCLA, the reportable quantity identified at 40 CFR Table 302.4,whichever is less.
- B. The EPA’s “List of Lists,” as defined in section 103.A.24., shall serve as a consolidated single reference to assist facility personnel and administrators in determining chemical emergency planning, emergency release notification and routine reporting requirements. If a hazardous chemical is not listed in the “List of Lists,” with an assigned threshold planning or reportable quantity, it shall not be subject to chemical emergency planning requirements under this section.
- C. For purposes of reporting propane, residential users shall be exempt up to 500 gallons.
- D. For purposes of chemical emergency planning and reporting under this section and sections 401 and 402 of this Ordinance, the total amount of the hazardous chemical subject to planning and/or reporting shall be determined based on chemicals present at the facility at any one time at concentrations at or above one per-cent, or if a carcinogen, at or above one-tenth of one-percent, regardless of location, number of containers, or method of storage.

- E. In determining thresholds, the owner/operator shall aggregate the amount of a hazardous chemical at the facility.
- F. For purposes of chemical emergency planning, the TERC may, in its discretion, designate additional facilities as subject to this ordinance, provided such designation includes:
1. Notification to the facility of the proposed designation.
 2. Prior public notice in a newspaper of general circulation within the Standing Rock Indian Reservation for a period of at least thirty (30) calendar days; and
 3. A provision for public comment to the TERC for a period of at least thirty (30) calendar days after which the TERC shall consider the statements submitted in such public comment period.
- G. The owner or operator of a facility shall notify the TERC in writing that it is subject to the provisions of this section within sixty (60) calendar days of enactment of this ordinance and, thereafter not later than sixty (60) calendar days before introducing to the facility a hazardous chemical at or above the applicable threshold as designated in this Ordinance. The owner/operator of a facility shall:
1. Promptly provide the information necessary for the development and implementation of a chemical emergency response plan when requested by the fire department or TERC; and
 2. Observe the general duty to inform the Fire Department, ~~appropriate LEPC~~ and the TERC of any substantive changes at the facility regarding the use, storage and/or handling of hazardous chemicals in accordance with ~~section 7.401.E~~ this Ordinance. This includes, but is not be limited to:
 - a. introduction of a new chemical at or above its reporting threshold;
 - b. changes in the facility emergency response plan that could impact off-site response or coordination; or
 - c. changes in chemical process and or facility protective measures that have previously been coordinated with environmental and or response personnel.
- H. A facility owner or operator who is subject to chemical emergency response planning requirements but is otherwise exempt from the MSDS filings required in section 402 of this Ordinance shall provide Tier Two chemical inventory information as part of their facility chemical emergency response plan. The facility owner or operator may elect to use the Tier Two form for this purpose or may furnish the information in a letter.

Information provided shall include:

1. Facility name, address, street, city, county, state, zip code;
 2. Standard Industrial Classification (SIC) Code (or its successor), Dun and Bradstreet Number;
 3. Owner/Operator name, phone and mail address;
 4. Chemical name, chemical abstract service (CAS) number and whether the chemical is an extremely hazardous substance;
 5. Physical and health hazards of the chemical [fire, sudden release of pressure, reactivity, immediate (acute) health, and/or delayed (chronic) health];
 6. The maximum amount of the chemical on site at any one time in pounds, using Tier Two coding;
 7. The container type, pressure and temperature using Tier Two coding;
 8. Chemical storage locations and a specific written request to the Fire Department, and TERC if storage information is to be kept from the public domain.
- I. The TERC shall transmit to the Administrator a list of facilities subject to the provisions of this ordinance annually on a date designated by the Director.
- J. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than sixty (60) calendar days before introducing to the facility a hazardous chemical at or above the amounts designated in this section, the owner or operator of a facility subject to this ordinance shall identify to the Fire Department and TERC a facility emergency coordinator who will:
1. Provide the facility chemical emergency response plan required pursuant to section 304 of this Ordinance;
 2. Participate in all emergency planning processes and activities required pursuant to this ordinance; and
 3. Serve as an on-going liaison between the Fire Department, TERC, and the facility.

SECTION 304

FACILITY EMERGENCY PLANS

A. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than thirty (30) calendar days before introducing to the facility a hazardous chemical at or above the amounts designated in this section, the owner or operator of a facility shall submit to the TERC ~~LEPC~~ a facility chemical emergency response plan that meets the following requirements:

1. Facility chemical emergency response plans shall clearly state the specific actions that will be taken in the event of an imminent or accidental reportable quantity release in order to safeguard the public health, safety, welfare and the environment.
2. In addition to facility name, physical and mailing address and the facility's latitude and longitude coordinates, a facility chemical emergency response plan shall include:
 - a. Names, addresses and emergency telephone numbers of a facility emergency coordinator and alternate;
 - b. A description of emergency warning systems and a list of emergency units, emergency personnel and health professionals in close proximity to the facility;
 - c. A description of appropriate emergency equipment necessary to respond to a release;
 - d. A description of emergency response procedures including notification procedures and evacuation plans in the event of a release;
 - e. Identification of transport routes and transportation methods to and from the facility;
 - f. Provisions for at least an annual review of the plan and provisions to demonstrate the capability to execute the plan on the request of the TERC; and
 - g. A Hazards Analysis.

B. Facility owners/operators who are required to prepare Hazardous Materials Management Plans, Risk Management Plans, Spill Prevention Control and Countermeasures Plans and/or Resource Conservation and Recovery Act Plans may use those plans to meet the requirements of this ordinance provided it meets the requirements of this ordinance. Each facility owner/operator is encouraged to follow the National Response Teams' Integrated Contingency Plan Guidance as published in 61 Fed. Reg. FR 28642-28664 (June 5, 1996) or any successor document.

C. In preparing facility chemical emergency response plans pursuant to this Section, the facility emergency coordinator shall consult with the Fire Department, TERC and other emergency and health professionals to assure maximum coordination of services as may be required in the event of a reportable hazardous chemical release.

D. The owner or operator of a facility subject to this section shall submit copies of the facility chemical emergency response plan to:

1. The Fire Department, and
2. The TERC

E. A facility emergency plan, Tier Two, and other documents shall be provided to the TERC and Fire Department.

SECTION 305 TERC EMERGENCY PLANS

A. The TERC shall prepare a chemical emergency response plan not later than eighteen (18) months after the enactment of this Ordinance. Such plans will be based on information provided in the facility chemical emergency response plans submitted under this Section. The TERC shall review its chemical emergency response plan annually and update the plan as required to reflect changes that have occurred within the Reservation. The TERC shall conduct an annual joint review with the Advisory Board and other planning and response personnel/entities if the TERC is also functioning as the Standing Rock Sioux Tribe LEPC.

C. The TERC shall consult with regional response teams established pursuant to the National Contingency Plan as established under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, (CERCLA), regarding a chemical emergency response plan, provided such consultation will not delay implementation of such plan.

D. Upon written request from a facility owner and the recommendation of the Director of DEP/EPA, the TERC may adjust minimum threshold planning and minimum reporting thresholds for a specific chemical and or facility, providing such adjustment does not raise the threshold above federally established minimums.

SECTION 306 EMERGENCY NOTIFICATION OF RELEASE OF HAZARDOUS SUBSTANCE

A. If a reportable quantity release of an extremely hazardous substance or hazardous substance occurs at a facility at which a hazardous chemical is produced, used or stored, the responsible party, (or in the absence of the responsible party, the responding agency), shall immediately verbally notify:

1. The Fire Department; Standing Rock Structural and BIA Wild Land Fire
2. The Director of the Standing Rock Sioux Tribe Emergency Management Program

The TERC, through its Chairperson or the Coordinator of the Emergency Management Department shall immediately contact the emergency response unit of the North Dakota Department of Emergency Services (NDDDES) and the North Dakota/South Dakota State Emergency Response Commission (ASERC), if the release is or is anticipated to be off- Reservation; provided, however, that such notification shall be provided pursuant to a reciprocal notification agreement.

3. The National Response Center.

B. Verbal notification shall occur immediately after the facility emergency coordinator or designee has knowledge of the reportable quantity release the notice of the reportable quantity release shall include the following:

1. The chemical name or identity of any substance involved in the release;
2. The specific location of the release;
3. An indication of whether the substance is an extremely hazardous substance;
4. An estimate of the quantity of substances released into the environment;
5. The time and duration of the release;
6. The medium or media into which the release occurred;
7. Any known or anticipated acute or chronic health risks associated with the release and, advice regarding medical attention necessary for exposed individuals, if within the informant's knowledge;
8. Proper precautions to be taken in response to the release, including evacuation and other proposed response actions; and
9. The name and telephone number of the person or persons to be contacted for further information.

C. After a release occurs but not later than fifteen (15) days, the owner or operator of a facility where the release occurred shall submit to the TERC a written follow-up report stating and updating the information originally provided which shall include the following additional information:

1. Actions taken to respond to and contain the release;
 2. Any known or anticipated acute or chronic health risks associated with the release;
 3. If appropriate, advice regarding medical attention necessary for exposed individuals; and
 4. Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.
- D. The owner or operator of a facility that has made a follow-up report pursuant to subsection C. above, shall update the notice in writing within seven (7) calendar days from the day on which additional information first becomes known.
- E. An owner or operator of a facility from which a transportation-related release occurs shall meet the reporting requirements of subsections A and B of this section, provided:
1. The Release occurs during transportation or storage incident to transportation; and
 2. The stored substance is moving under active shipping papers and has not reached its ultimate consignee.

Part 400—STANDING ROCK SIOUX TRIBE ACCESS TO INFORMATION SUBJECT TO THIS ORDINANCE

SECTION 401 PUBLIC ACCESS AND INFORMATION

- A. Information collected under this Ordinance is obtained to allow Standing Rock Sioux Tribal members to have access to information regarding storage and release of hazardous chemicals on the Reservation. This information is used to improve prevention, preparedness, and response, research and mitigation efforts on an individual as well as a Standing Rock Sioux Tribe basis.
- B. In addition to limitations stated in any section of this ordinance, information provided by EPCRA shall govern the release of information to the public pursuant to this ordinance and are incorporated herein by reference.
- C. Emergency Response Plans, Material Safety Data Sheets, Tier II Inventory Forms, Chemical Release Forms and follow-up emergency reports obtained pursuant to this ordinance shall be available to the public at locations and times established by the TERC. Confidential storage information shall not be released to the public.

- D. Requests for information hereunder shall be made either to the TERC.

SECTION 402 MATERIAL SAFETY DATA SHEETS (MSDS)

- A. The owner or operator of a facility who is required to prepare or have available an MSDS for hazardous chemicals under the applicable regulations of the Occupational Safety and Health Act Administration (OSHA) at 29 CFR 1910.1200(c) shall be subject to the requirements of this section.
- B. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than thirty (30) calendar days before introducing a hazardous chemical at or above the amounts designated in section 303, the owner or operator of a facility shall submit to the Fire Department and the TERC:
1. A list of Hazardous Chemicals for which the MSDS is required. A list of Hazardous Chemicals submitted pursuant hereto shall include:
 - a. Chemical or common name;
 - b. CAS number; and
 - c. Hazardous chemical component(s). If more than one hazardous chemical component is in the mixture to be reported, the facility owner or operator shall submit the MSDS for that mixture.
 - d. Categorization of the hazardous chemical or hazardous chemical mixture using the hazard categories defined by the EQC in accordance with federal guidelines (40 C.F.R. § 370.2) including the following categories: fire, sudden release of pressure, reactivity, immediate (acute) health, and/or delayed (chronic) health.
 2. Calculations for hazardous chemical mixtures and aggregation of extremely hazardous substances shall be prepared in accordance with the requirements established by federal law published at 40 CFR §370.28. Aggregation shall be required for all hazardous chemicals at a facility.
 3. Thresholds for reporting under this section are as specified in section 303 of this ordinance.
 4. Upon written request from a facility owner and the recommendation of the Director of the DER/EPA, the TERC may adjust minimum threshold planning and minimum reporting thresholds for a specific chemical and or facility, providing such adjustment does not raise the threshold above federally established

minimums.

- C. The MSDS or list of Hazardous Chemical submitted pursuant to this section shall indicate whether the owner or operator elects to withhold disclosure of information regarding a substance on grounds of Trade Secret protection as applicable under federal law.
- D. The MSDS or list of Hazardous Chemicals required hereunder shall be submitted to:
 - 1. The Fire Department, Tribal and BIA
 - 2. The TERC.
- E. An owner/operator of a facility who discovers new information concerning a hazardous chemical for which he or she is required to maintain an MSDS and/or receives delivery of a hazardous chemical not previously reported pursuant to the reporting requirements of this section shall immediately verbally notify the Fire Department and TERC of such discovery. Follow-up written notification to the Fire Department and TERC shall be within seven (7) calendar days of such discovery. Every effort will be made by facility owners and operators to obtain information about hazardous chemicals that are to be located at their facility before the chemical is accepted into facility inventory.
- F. Within thirty (30) calendar days following the date on which a written request for an MSDS concerning a hazardous chemical at a specific facility is received from any person, and abiding by trade secret and confidential storage information provisions and regulations adopted pursuant to EPCRA, the TERC shall make that MSDS available to the requestor. In the event that the TERC does not have the requested MSDS, the TERC shall request the MSDS from the facility owner or operator.
- G. The owner or operator of a facility that has not submitted an MSDS for a hazardous chemical in compliance with this section shall submit the MSDS within thirty (30) calendar days of the date of a request for that MSDS by the Fire Department or TERC.
- H. A facility owner or operator may meet the list requirements of this section by submitting a *Tier Two Emergency and Hazardous Chemical Inventory* form as either an initial submission or as an update to a previous submission, providing the owner or operator submits MSDS' for mixtures containing more than one hazardous chemical component.

SECTION 403. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

- A. The owner or operator of a facility required to prepare or have available an MSDS or a list of Hazardous Chemicals shall annually submit a *Tier Two Emergency and Hazardous*

Chemical Inventory Form reporting hazardous chemicals that were present at their facility during the preceding calendar year to:

1. The Fire Department, Tribal or BIA.
 2. The TERC
- B. The Tier Two inventory form required under this section shall be:
1. Submitted within sixty (60) calendar days of the enactment of this ordinance and thereafter on or before the first day of March of each year in the format prescribed by 40 CFR Part 370 or as approved by the TERC;
 2. Comply with the reporting requirements at sections 402 and 403 of this Ordinance. Minimum reporting thresholds will be as prescribed in section 303 of this Ordinance;
 3. Include the Confidential Location Information Sheet provided in 40 CFR §370.41, which will be made available upon request to the Director, if the facility owner or operator wishes to maintain confidentiality regarding on-site storage locations.
- C. The Owner or Operator of any facility subject to Tier Two Hazardous Chemical Inventory reporting requirements shall allow on-site inspection by the Fire Department and TERC and shall provide the inspecting agency specific location information on hazardous chemicals present at the facility.
- D. Upon written request, Tier Two information received by the TERC shall be provided to any person requesting such information in accordance with the provisions of section 401 of this Ordinance.

SECTION 404 TOXIC CHEMICAL RELEASE FORMS

- A. A Facility shall be subject to the requirements of this section if it manufactures, processes or otherwise uses a Toxic Chemical:
1. Pursuant to 40 CFR §372.22;
 2. In violation of guidance defining threshold levels as published by the EQC ~~Director~~; or
 3. Is in excess of the threshold amount for such Toxic Chemical established pursuant to 40 C.F.R. §§372.25-372.27.
- B. The Owner or Operator of a Facility subject to this Section shall, on the 1st day of July of

each year, or on another date if reporting dates are modified by the Owner, submit to the Director of the DER/EPA and the TERC a Toxic Chemical Release Form (Form R) covering the preceding year. The Toxic Chemical Release Form shall comply in all respects to the requirements of 40 C.F.R. Part 372.

- C. The Director of DER/EPA may, on the Tribal Chairman's behalf, petition the Administrator to add a chemical or delete a chemical pursuant to Section 313(c)(2) of EPCRA.
- D. The Director of DER/EPA may, on the Tribal Chairman's behalf, request the Administrator to cause the requirements of this Section to be applicable to any facility that manufactures, processes or otherwise uses a Toxic Chemical listed pursuant to Section 313(c) of EPCRA on the basis that the Administrator determines that such application is warranted because of:
 - 1. The toxicity of the chemical in question;
 - 2. The proximity of the facility to other facilities that release the Toxic Chemical or to population centers on the Reservation;
 - 3. The history of releases of the chemical at the facility; and
 - 4. Such other factors as the Administrator deems appropriate.
- E. Toxic Chemical Release Forms filed pursuant to this Section shall be available to the public subject to the provisions of section 401 of this Ordinance.

Part 500 IMMUNITY FROM CIVIL SUIT

SECTION 501 SOVEREIGN IMMUNITY

This Ordinance does not constitute a waiver of the sovereign immunity from suit of the Standing Rock Sioux Tribe.

Part 600 – ENFORCEMENT: PENALTIES

SECTION 601 EPCRA: ENFORCEMENT

- A. If the Director of DER/EPA determines that a facility is in violation of any provision of this ordinance, a rule adopted pursuant to this Ordinance, or is creating an imminent and

substantial endangerment to the public health or environment, the director may issue an order requiring compliance immediately or within a specified period of time and may impose a civil penalty of up to \$5,000 per day per violation. Each day of failure to perform any act or duty required by this ordinance may constitute a separate offense.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.

SECTION 602 CIVIL JUDICIAL PENALTIES

A willful violation of the compliance order shall subject the non-compliant person or entity violating this Ordinance to a civil judicial penalty of up to \$25,000 per day per violation.

PART 7 - ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SECTION 701 ADMINISTRATIVE PROCEDURES

A. A person aggrieved by an enforcement order issued pursuant to section 601 of this Ordinance may appeal to the Environmental Quality Commission. The aggrieved person shall request a hearing in writing to the EQC to be postmarked or personally delivered within 10 days to – Box D, Fort Yates, North Dakota 58538.

B. The EQC shall conduct all proceedings under this section pursuant to the requirements of SRST Code of Justice section 20-104.

SECTION 702 JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS

The Standing Rock Tribal Court shall have exclusive jurisdiction to review a hearing decision of the EQC under section 701 of this Ordinance. The judicial review shall be conducted in accordance with SRST Code of Justice section 29-195(b).

Part 800 - APPROPRIATION AND CONTRIBUTIONS

SECTION 801 TERC ANNUAL BUDGET

The TERC, through the Department, shall annually propose a program budget to the Standing Rock Sioux Tribe Council in order to provide for the implementation and enforcement of this ordinance.