TRIBAL CODE

CHAPTER 200

HAZARDOUS SUBSTANCE CONTROL CODE

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# TRIBAL CODE

# CHAPTER 200

# HAZARDOUS SUBSTANCE CONTROL CODE

## CHAPTER I: GENERAL PROVISIONS

### 200.101 Title

Hazardous Substance Control Code ("HSCC" or "Code").

### 200.102 Purpose

(1) The beneficial stewardship of the land, air, waters, natural resources, sacred sites, and traditional, spiritual, and cultural properties of the Lac du Flambeau Indian Reservation ("Reservation") by the Lac du Flambeau Band of Lake Superior Chippewa Tribal Council ("Tribal Council") 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 Lac du Flambeau Indian Reservation ("Reservation Population") benefits from a healthful environment and each person has a responsibility to preserve and protect for future generations the quality of the Reservation.

(2) The Tribal Council finds that an emergency currently exists that requires the immediate action of the Council to secure the preservation of life, health, property, and natural resources of the Tribe and its people. Pollution sources are currently known to have contaminated, or are suspected of contaminating, the Reservation air, land, beds, and banks, and the quality of surface water and ground waters on fee and trust lands within the exterior boundaries of the Lac du Flambeau Reservation ("Reservation Environment").

(3) This HSCC authorizes the Tribe to exercise its civil regulatory authority for the purpose of identifying, investigating, and cleaning up areas within the Reservation Environment that are impacted or potentially impacted by releases of hazardous substances and to assert claims for injury to or loss of natural resources owned or managed by the Tribe that have been adversely impacted due to releases of hazardous substances into the Reservation Environment. The Tribal Council intends for this HSCC to be remedial in nature and for its purposes to be broadly construed.

(4) In particular, this HSCC: (a) responds to the existing emergency; (b) provides for the cleanup of those historic legacy areas where hazardous substances, even though released into the environment before the enactment of this HSCC, nevertheless remain toxic and currently exceed the Tribe's cleanup standards; (c) establishes a strict joint and several liability scheme and enforcement program to help protect the health and welfare of the Reservation Population, the quality of the Reservation Environment, and the political integrity or economic security of the Tribe from and against adverse impacts due to past and/or ongoing releases of hazardous substances; (d) establishes a comprehensive remedial program that is intended to educate the Reservation Population and actively discourage the improper disposal or release of hazardous substances on or into the Reservation Environment; and (e) provides for the Tribe's assertion of claims, as a matter of Tribal law, against those



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responsible for injury or damage to natural resources due to past, present or future releases of hazardous substances into the environment and for the Tribe's costs in assessing such injury or damage as well as the cost of restoration and/or replacement of injured or damaged natural resources.

200.103 Authority

This Code is enacted pursuant to Article I, Section II and Article VI, Sections 1(a) and 1(n) of the Tribe's Constitution.

200.104 Effective Date

This Code shall take effect on the day following adoption by the Lac du Flambeau Tribal Council ("Effective Date"). Because of the remedial nature of this Code, it shall apply to releases of hazardous substances that occur after the Effective Date of this Code and shall apply retroactively to past releases of hazardous substances that currently violate the Tribe's cleanup standards.

200.105 Interpretation

The provisions of this Code are to be liberally construed to effectuate its policies and purposes. Where this Code conflicts with or imposes greater restrictions than those contained in other Tribal Ordinances, Codes, or Resolutions, this Code shall govern.

200.106 Sovereign Immunity

Nothing in this Code shall be construed to constitute a waiver of the sovereign immunity of the Tribe, or of any instrumentality, agent, officer, or employee of the Tribe.

200.107 Severability

If any provision of this Code or its application to any person or circumstance is held to be invalid, the remainder of this Code or the application of the provision to other persons or circumstances is not affected.

200.108 Captions

As used in this Code, captions do not constitute part of the law.

200.109 Applicability

This Code shall apply to the Reservation Population and to all lands and waters within the Reservation Environment.

200.110 Definitions

1. "*Attorney*" means an authorized attorney retained by the Tribe to carry out the duties as described in the Code.



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2. "*Agreed Order*" means an Order issued by the Department under this Code with which the Potentially Liable Person receiving the Order agrees to comply.

3. "Consent Decree" means a settlement agreement between the Department and one or more Potentially Liable Persons which is issued by either the Tribal Court or by another Court of competent jurisdiction.

4. "*Department*" means the Natural Resources Department of the Lac du Flambeau Indian Reservation.

5. "*Facility*" or *"Site"* means:

   A. Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

   B. Any area where a Hazardous Substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

6. "*Federal Cleanup Law*" means the federal *Comprehensive Environmental Response, Compensation, and Liability Act of 1980* (CERCLA), 42 U.S.C. § 9601 *et seq*., as amended by Public Law 99-499.

7. "*Foreclosure and its Equivalents*" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

8. "*Hazardous Substance*" means:

   A. 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:

      (1) Have short lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

      (2) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.

   B. Any "*hazardous waste*," defined as any waste which:

      (1) Will persist in a hazardous form for three (3) years or more at a disposal Site; <u>and</u>

      (2) <u>While in its persistent form</u>:

(a) Presents a significant environmental hazard and 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 people or wildlife; or

(c) Adversely affects living organisms in soil, sediment, and water, or air; or

(3) If disposed of at a disposal Site in such quantities or concentrations as might present a hazard to people or the environment.

C. 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.

D. Any substance that is defined as a Hazardous Substance under section 101(14) of the Federal Cleanup Law, 42 U.S.C. § 9601(14); and

E. Petroleum or petroleum products.

F. The term Hazardous Substance does not include crude oil or any fraction thereof or petroleum when contained in an underground storage tank from which there is not a release so long as the tank is in compliance with all applicable federal and Tribal laws.

9. "*Hazardous Substance Account*" means an account of money set aside for uses described in Chapter VI.

10. "*Holder*" means a person who holds indicia of ownership primarily to protect a security interest. A Holder includes the initial holder such as the loan originator, any subsequent holder such as a successor in interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court appointed trustee, or other person who acts on behalf or for the benefit of a Holder. A Holder can be a public or privately owned financial institution, receiver, conservator; loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

11. "*Independent Remedial Actions*" means a remedial action or remedial actions conducted without Department oversight or approval, and not under an Order, Agreed Order, or Consent Decree. Such actions may be undertaken, for example, as part of a Voluntary Cleanup Program developed by the Department pursuant to Section 200.202.

12. "*Indicia of Ownership*" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a Facility securing a loan or other obligation, including any legal or equitable title to a Facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes: mortgages, deeds of trust, sellers interest in

a real estate contract, liens, surety bonds, guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased Facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the Facility that are held primarily to protect a security interest.

13. "*Lac du Flambeau Band of Lake Superior Chippewa*" means the Tribal government.

14. "*Operating a Facility Primarily to Protect a Security Interest*" occurs when all of the following are met:

    A. Operating the Facility where the borrower has defaulted on the loan or otherwise breached the security agreement;

    B. Operating the Facility to preserve the value of the Facility as an ongoing business;

    C. The operation is being done in anticipation of a sale, transfer, or assignment of the Facility; and

    D. The operation is being done primarily to protect a security interest. Operating a Facility for longer than one (1) year prior to foreclosure or its equivalents shall be presumed to constitute operating the Facility for other than to protect a security interest.

15. "*Owner*" or "*Operator*" means:

    A. Any Person with any ownership interest in the facility or who exercises any control over the Facility; or

    B. In the case of an abandoned Facility, any Person who had owned, or operated, or exercised control over the Facility any time before its abandonment;

    C. <u>The term does not include</u>:

        (1) The Tribe or any Tribal instrumentality not subject to a specific waiver of sovereign immunity;

        (2) A Person who, without participating in the management of a Facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure, and their equivalent, and Holders who engage in any of the activities identified in subsection 16, subparts (E) through (G) of this section 200.110 shall not lose this exemption provided the holder complies with all of the following:

            a. The Holder properly maintains the environmental compliance measures already in place at the Facility;

            b. The Holder complies with the reporting requirements in the rules adopted under this Code;

c. The Holder complies with any order issued to the Holder by the Department to abate an imminent or substantial endangerment;

d. The Holder allows the Department or Potentially Liable Persons under an Order, Agreed Order, or settlement agreement under this Code access to the Facility to conduct Remedial Actions and does not impede the conduct of such Remedial Actions;

e. Any Remedial Actions conducted by the Holder are in compliance with any preexisting requirements identified by the Department, or, if the Department has not identified such requirements for the Facility, the Remedial Actions are conducted consistent with this Code; and

f. The Holder does not exacerbate an existing release. The exemption in this section 200.110, subsection 15, subpart (C)(2) does not apply to Holders who cause or contribute to a new Release or threatened Release or who are otherwise liable under section 200.302, subsections (1), (2), (3), and (4); provided, however, that a Holder shall not lose this exemption if it establishes that any such new Release has been remediated according to the requirements of this Code and that any Hazardous Substances remaining at the Facility after remediation of the new Release are divisible from such new Release;

(3) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a non employee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a Person is liable under this Code independently of the Person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing Release of Hazardous Substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

a. The fiduciary properly maintains the environmental compliance measures already in place at the Facility;

b. The fiduciary complies with the reporting requirements in the rules adopted under this Code;

c. The fiduciary complies with any order issued to the fiduciary by the Department to abate an imminent or substantial endangerment;

d. The fiduciary allows the Department or Potentially Liable Persons under an order, Agreed Order, or settlement agreement under this Code access to the Facility to conduct Remedial Actions and does not impede the conduct of such Remedial Actions;

e. Any Remedial Actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the Department, or, if the Department has not identified such requirements for the Facility, the Remedial Actions are conducted consistent with the rules adopted under this Code; and

f. The fiduciary does not exacerbate an existing Release.

The exemption in this section 200.110, subsection 15, subpart (C)(3) does not apply to fiduciaries who cause or contribute to a new Release or threatened Release or who are otherwise liable under section 200.302, subsections (1), (2), (3), and (4); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new Release has been remediated according to the requirements of this Code and that any Hazardous Substances remaining at the Facility after remediation of the new Release are divisible from such new Release. The exemption in this section 200.110, subsection 15, subpart (C)(3) also does not apply where the fiduciary's powers to comply with this section 200.110, subsection 15, subpart (C)(3) are limited by a governing instrument created with the objective purpose of avoiding liability under this Code or of avoiding compliance with this Code; or

(4) Any Person who has any ownership interest in, operates, or exercises control over real property where a Hazardous Substance has come to be located solely as a result of migration of the Hazardous Substance to the real property through the ground water from a source off the property, if:

a. The Person can demonstrate that the Hazardous Substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a Release of the Hazardous Substance that has migrated onto the property;

b. The Person has not caused or contributed to the Release of the Hazardous Substance;

c. The Person does not engage in activities that damage or interfere with the operation of Remedial Actions installed on the Person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

d. If requested, the Person allows the Department and Potentially Liable Persons who are subject to an order, Agreed Order, or Consent Decree, and the authorized employees, agents, or contractors of each, access to the property to conduct Remedial Actions required by the Department. The Person may attempt to negotiate an access agreement before allowing access; and

e. Legal withdrawal of groundwater does not disqualify a Person from the exemption in this section 200.110, subsection 15, subpart (C)(4).

16. "*Participation in Management*" means exercising decision making control over the borrower's operation of the Facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day to day decision making of the enterprise.

The term does not include any of the following:

A. A Holder with the mere capacity or ability to influence, or the unexercised right to control Facility operations;

B. A Holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the Facility for which indicia of ownership is held;

C. A Holder who requires a borrower to come into compliance with any applicable laws or regulations at the Facility for which indicia of ownership is held;

D. A Holder who requires a borrower to conduct Remedial Actions, including setting minimum requirements, but does not otherwise control or manage the borrower's Remedial Actions or the scope of the borrower's Remedial Actions except to prepare a Facility for sale, transfer, or assignment;

E. A Holder who engages in workout or Policing Activities primarily to protect the Holder's security interest in the Facility;

F. A Holder who prepares a Facility for sale, transfer, or assignment or requires a borrower to prepare a Facility for sale, transfer, or assignment;

G. A Holder who operates a Facility primarily to protect a security interest or requires a borrower to continue to operate, a Facility primarily to protect a security interest; and

H. A prospective Holder who, as a condition of becoming a Holder, requires an Owner or Operator to conduct an environmental audit or an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct Remedial Actions prior to holding a security interest is not participating in the management of the Facility.

17. "*Person*" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or a Tribal instrumentality that is subject to a waiver of sovereign immunity.

18. "*Policing Activities*" means actions the Holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the Holder takes or requires the borrower to take to maintain the value of the security. Policing Activities include: Requiring the borrower to conduct Remedial Actions at the Facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the

Facility including on Site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

19. "*Potentially Liable Person*" or *"PLP"* means any Person whom the Department finds, based on credible evidence, to be liable under Chapter III. The Department shall give notice to any such Person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

20. "*Prepare a Facility for Sale, Transfer, or Assignment*" means to: secure access to the Facility; perform routine maintenance on the Facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the Facility; conduct Remedial Actions to clean up Releases at the Facility; or perform other similar activities intended to preserve the value of the Facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer or assignment, primarily to protect the Holder's security interest in the Facility. A Holder can Prepare a Facility for Sale, Transfer, or Assignment for up to one (1) year prior to foreclosure and its equivalents and still stay within the security interest exemption in section 200.110, subsection 15, subpart (C)(2).

21. "*Primarily to Protect a Security Interest*" means the indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes or indicia of ownership held primarily for purposes other than as protection for a security interest. A Holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five (5) years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For Facilities that have been acquired through foreclosure or its equivalents prior to the date this Code is enacted and adopted by the Tribal Council, this five (5) year period shall begin as of the date of enactment and adoption.

22. "*Public Notice*" means adequate notice as determined by the Department and may include notice: mailed to all Persons who have made timely request of the Department; published in the *Lac du Flambeau News*; and/or an opportunity for interested Persons to comment.

23. "*RCRA*" means the *Resource Conservation and Recovery Act*, 42 U.S.C. § 6901 et seq., as amended.

24. "*Release*" means any intentional or unintentional entry of any Hazardous Substance into the Reservation Environment, including but not limited to, the abandonment or disposal of containers of Hazardous Substances.

25. "*Remedy*" or "*Remedial Action*" means any action or expenditure consistent with the purpose of this Code to identify, eliminate, clean up, or minimize any threat of potential threat posed by Hazardous Substances to the health of the Reservation Population or the



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quality of the Reservation Environment, including any investigative and monitoring activities with respect to any Release or threatened Release of a Hazardous Substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

26. "*Reservation*" means the geographical area within the external boundaries of the Lac du Flambeau Chippewa Reservation, as surveyed and reserved pursuant to Article I, Clause 3d, of the Treaty of September 30, 1854, 10 Stat. 1109.

27. "*Reservation Environment*" means all lands, air, surface water and groundwater, natural resources, sacred sites and traditional spiritual and cultural properties located within the exterior boundaries of the Lac du Flambeau Indian Reservation.

28. "*Reservation Population*" means all Persons either residing or doing business within the Reservation Environment.

29. "*Sediment*" means unconsolidated material eroded from parent rock, including soil and/or any man-made unconsolidated solid material of a particulate nature that exists below the ordinary high water mark of any water body or wetland.

30. "*Tribe*" or "*Tribal Government*" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

31. "*Tribal Council*" means the governing body of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

32. "*Tribal Court*" means the Lac du Flambeau Tribal Court as established in Chapter 70 of the Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Code.

33. "*Tribal Instrumentality*" means a unit of Tribal government or a Tribal organization that is ultimately responsible to the Tribal Council.

## CHAPTER II: POWERS AND DUTIES

### 200.201 Powers

The Department may exercise the following powers in addition to any other powers granted by Tribal or federal law:

1. Investigate, provide for investigating, or require Potentially Liable Persons to investigate any Releases or threatened Releases of Hazardous Substances, including but not limited to inspecting, sampling or testing to determine the nature or extent of any Release or threatened Release. If there is a reasonable basis to believe that a Release or threatened Release of a Hazardous Substance may exist, the Department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. The Department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the Department deems necessary;



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2. Conduct, provide for conducting, or require Potentially Liable Persons to conduct Remedial Actions (including investigations under section 200.201, subsection 1) to remedy Releases or threatened Releases of Hazardous Substances. In carrying out such powers, the Department's authorized employees, agents, or contractors may enter upon property. The Department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring Remedial Action, the Department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the Remedial Action;

3. Provide for Public Notice of investigative plans, cleanup plans or remedial plans and other significant actions taken under this Code;

4. Retain contractors and consultants to assist the Department in carrying out investigations and Remedial Actions;

5. Carry out Tribal programs authorized under the Federal Cleanup Law or other federal laws;

6. Classify substances as Hazardous Substances for purposes of section 200110, subsection 8;

7. Issue unilateral Orders (where the PLP has not agreed to comply) or enter into Consent Decrees or Agreed Orders (where the PLP has agreed to comply) that may, at the Department's sole discretion, include deed restrictions or other appropriate institutional controls as may be necessary to protect human health and the environment from a Release or threatened Release of a Hazardous Substance from a Facility. Prior to establishing a deed restriction or other appropriate institutional control under this subsection, the Department shall notify and seek comment from the Tribal Land Use Board with jurisdiction over the real property subject to such restriction;

8. Enforce the application of permanent and effective institutional controls that are necessary for a Remedial Action to be protective of human health and the environment;

9. Require Holders to conduct Remedial Actions necessary to abate an imminent or substantial endangerment pursuant to section 200.110, subsection 15, subpart (C), sub subpart (2)(c).

10. Provide informal advice and assistance to persons regarding the administrative and technical requirements of this Code, such as the provision of Site-specific advice to Persons who are conducting or otherwise interested in conducting an Independent Remedial Action. Any such advice or assistance shall be advisory only, and shall not be binding on the Department. As a part of providing this advice and assistance for Independent Remedial Actions, the Department may prepare written opinions regarding whether the Independent Remedial Actions or proposals for those actions meet the substantive requirements of this Code or whether the Department believes further Remedial Action is necessary at the Facility. The Department may collect from Persons requesting advice and assistance the costs incurred by the Department in providing such advice and assistance; however, the Department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The Tribe, Department, and officers, agents, Attorneys, and employees of the Tribe are immune from all liability, and no cause of

action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance;

11. Implement all provisions of this Code, including current cleanup standards and cleanup standards to be developed in accordance with Chapter IX, and to the maximum extent practicable, institute investigative and Remedial Actions where appropriate. In addition, the Department shall:

    A. Require an Owner or Operator of Releases of Hazardous Substances to the environment that may be a threat to human health or the environment to provide verbal notification within twenty-hour (24) hours and written notification within seventy-two (72) hours of discovery to the Department, including such exemptions from reporting as the Department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

    B. Establish reasonable deadlines for initiating an investigation of a Hazardous Substance Site after the Department receives information that the Site may pose a threat to human health or the environment and other reasonable deadlines for remedying Releases or threatened Releases at the Site; and

    C. Enforce clean up standards and criteria as set forth in Chapter IX.

12. Take any other actions necessary to carry out the provisions of this Code, including proposing that the Tribal Council amend this Code.

200.202 Tribal Response Program and Voluntary Cleanup Program

The Department may, as available resources permit, establish a program to: identify potential Hazardous Substance Sites; work with PLPs to facilitate Independent Remedial Actions; and encourage the Reservation Population to provide information to the Department about the presence of Hazardous Substance Sites.

CHAPTER III: LIABILITY AND SETTLEMENT

200.301 Strict, Joint and Several Liability

Each Person who is liable under this Code is strictly liable, jointly and severally, for all Remedial Action costs and for all natural resource damages resulting from the Releases or threatened Releases of Hazardous Substances, regardless of when the Release occurred or whether the Release was or was not a violation of the law at the time it occurred. The Department is empowered to recover all costs and damages from Persons Liable therefor.

200.302 Persons Liable

Except as provided in section 200.303, the following Persons are liable with respect to a Facility:

1. The Owner or Operator of the Facility;



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2. Any Person who owned or operated the Facility at the time of disposal or Release of the Hazardous Substances;

3. Any Person who owned or possessed a Hazardous Substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the Hazardous Substance at the Facility, or arranged with a transporter for transport for disposal or treatment of the Hazardous Substances at the Facility, or otherwise generated Hazardous Substances disposed of or treated at the Facility;

4. Any Person who:

   A. Accepts or accepted any Hazardous Substance for transport to a disposal, treatment, or other Facility selected by such Person from which there is a Release or a threatened Release for which Remedial Action is required, unless such Facility, at the time of disposal or treatment, could legally receive such substance; *or*

   B. Accepts a Hazardous Substance for transport to such a Facility and has reasonable grounds to believe that such a Facility is not operated in accordance with RCRA and programs appropriately delegated under RCRA; and

200.303 Persons Not Liable

The following Persons are not liable under this section:

1. Any Person who can establish that the Release or threatened Release of a Hazardous Substance for which the Person would be otherwise responsible was caused solely by:

   A. An act of God;

   B. An act of war; or

   C. An act or omission of a third party (including but not limited to a trespasser) other than:

      (1) An employee or agent of the Person asserting the defense, or

      (2) Any Person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Person asserting this defense to liability.

      This defense only applies where the Person asserting the defense has exercised the utmost care with respect to the Hazardous Substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

2. Any Person who is an Owner, past Owner, or purchaser of a Facility and who can establish by a preponderance of the evidence that at the time the Facility was acquired by the Person, the Person had no knowledge or reason to know that any Hazardous Substance, the Release or threatened Release of which has resulted in or contributed to the need for the Remedial



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Action, was Released or disposed of on, in, or at the Facility. This section 200.303, subpart 2 is limited as follows:

A. To establish that a Person had no reason to know, the Person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this Section 200.303, subpart 2 shall take into account any specialized knowledge or experience on the part of the Person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

B. The defense contained in this Section 200.303, subpart 2 is not available to any Person who had actual knowledge of the Release or threatened Release of a Hazardous Substance when the Person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

C. The defense contained in this Section 200.303, subpart 2 is not available to any Person who, by any act or omission, caused or contributed to the Release or threatened Release of a Hazardous Substance at the Facility;

3. Any natural Person who uses a Hazardous Substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that Person is:

   A. A resident of the dwelling;

   B. A Person who, without compensation, assists the resident in the use of the substance; or

   C. A Person who is employed by the resident but who is not an independent contractor;

4. Any Person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable Tribal and federal laws and regulations.

200.304 Settlement with Potentially Liable Persons

There may be no settlement by the Department with any person potentially liable under this Code except in accordance with this subsection.

1. The Department may agree to a settlement with any Potentially Liable Person only if the Department finds that the proposed settlement would lead to a more expeditious cleanup of Hazardous Substances in compliance with the cleanup standards set out in Chapter IX and with any remedial orders issued to such PLP by the Department. Whenever practicable and in the public interest the Department may expedite such a settlement with a Person whose contribution is insignificant in amount and toxicity.



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2. A settlement agreement under this subsection shall be entered as a Consent Decree issued by the Tribal Court or by a court of competent jurisdiction.

3. A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any Person with whom the Department has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the Tribal Court or a court of competent jurisdiction to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

4. A party who has resolved its liability to the Department under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the Department by the amount of the settlement.

5. If the Department has entered into a Consent Decree with an Owner or Operator under this section, the Department shall not enforce this Code against any Owner or Operator who is a successor in interest to the settling party unless under the terms of the Consent Decree the Department could enforce against the settling party, if:

   A. The successor Owner or Operator is liable with respect to the Facility solely due to that persons ownership interest or operator status acquired as a successor in interest to the Owner or Operator with whom the Department has entered into a Consent Decree; and

   B. The stay of enforcement under this subsection does not apply if the Consent Decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. Such unique circumstances shall be specified in the Consent Decree.

6. Any Person who is not subject to enforcement by the Department under section 200.304, subpart 5 is not liable for claims for contribution regarding matters addressed in the settlement.

200.305 <u>Settlement with Persons Not Liable to Support Tribal Brownfield Reuse and Redevelopment</u>

In addition to the settlement authority provided under section 200.304, the Department may agree to a settlement with a Person not currently liable for Remedial Action at a Facility who proposes to purchase, redevelop, or reuse the Facility, provided that:

1. The settlement will yield substantial new resources to facilitate cleanup;

2. The settlement will expedite Remedial Action consistent with this Code; and

3. Based on available information, the Department determines that the redevelopment or reuse of the Facility is not likely to contribute to the existing Release or threatened Release, interfere with Remedial Actions that may be needed at the Site, or increase health risks to Persons at or in the vicinity of the Site.



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The Department does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this section 200.305, is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The Department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial Facility, or the development of a Facility by a Tribal entity to address an important public purpose.

200.306 Preservation of Rights

Nothing in this Code affects or modifies in any way any Person's right to seek or obtain relief under Tribal law or other applicable laws, including but not limited to, damages for injury or loss resulting from a Release or threatened Release of a Hazardous Substance. No settlement by the Department or Remedial Action ordered by the Tribal Court, a court of competent jurisdiction or the Department affects any Person's right to obtain a remedy under Tribal law, or other applicable laws.

CHAPTER IV: ENFORCEMENT

200.401 Administrative Orders, Fines and Penalties

With respect to any Release, or threatened Release, for which the Department does not conduct or contract for conducting Remedial Action and for which the Department believes Remedial Action is in the public interest, the Department shall issue Orders or Agreed Orders requiring Potentially Liable Persons to provide the Remedial Action. Any liable person who refuses, without sufficient cause, to comply with an Order or Agreed Order of the Department is liable in an action brought by the Department for:

1. Up to three (3) times the amount of any costs incurred by the Department as a result of the party's refusal to comply; and

2. A civil fine of up to Five Thousand Dollars ($5,000) for each day the party refuses to comply.

The treble damages and civil fines under this subsection apply to all recovery actions filed on or after the date this Code is enacted and adopted by the Tribal Council.

200.402 Cost Recovery

The Department shall seek, by filing an action if necessary, to recover the amounts spent by the Department for investigative and Remedial Actions and Orders, including amounts spent prior to the date this Code is enacted and adopted by the Tribal Council.

200.403 Additional Relief

The Department may request that an authorized Attorney retained by the Tribe bring an action to secure such relief as is necessary to protect human health and the environment under this Code.

CHAPTER V: JUDICIAL REVIEW

200.501 Reviewability of Department Decisions



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The Department's investigative and remedial decisions under Chapters II and IV and its decisions regarding liable persons under Chapter III shall be reviewable exclusively in Tribal Court, unless a suit has been filed by the Department in another court of competent jurisdiction, and only at the following times:

1. In a cost recovery suit under section 200.402;

2. In a suit by the Department to enforce an order or an Agreed Order, or seek a civil fine under this Code; and

3. In a suit by the Department to compel investigative or Remedial Action.

200.502 Standard of Review

In all such matters where judicial review is sought, the court shall uphold the Department's action unless such action was arbitrary and capricious.

CHAPTER VI: HAZARDOUS SUBSTANCE ACCOUNT

200.601 Purpose

There shall be established a hazardous substance account to be administered by the Department. Moneys in the account may be used only to carry out the purposes of this Code and may be spent only after approval of a budget by the Tribal Council.

200.602 Funding Sources

The following moneys shall be deposited into or credited to the hazardous substance account:

1. The costs of Remedial Actions recovered under this Code;

2. Civil fines collected or recovered under this Code;

3. All earnings from investment of balances in the account; and

4. Any other money appropriated or transferred to the account by the Department.

200.603 Application of Hazardous Substance Funds

Moneys in the account may be used only to carry out the purposes of this Code, including but not limited to, the following activities:

1. The Hazardous Substance cleanup program required under this Code;

2. Matching funds required under any federal law;



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3. Tribal programs for the safe reduction, recycling, or disposal of Hazardous Substances from households, small businesses, and agriculture;

4. Mechanisms to provide public notice, and for and implementing public participation practices and procedures to be developed by the Department; and

5. Hazardous materials emergency response training.

CHAPTER VII: PRIVATE RIGHT OF ACTION – REMEDIAL ACTION COSTS

200.701 Private Rights of Action and Claims for Contribution

A Person may bring a private right of action, including a claim for contribution or for declaratory relief, against any Person who is liable under Chapter III for the recovery of Remedial Action costs, except that no private right of action may be brought against the following:

1. The Tribe or instrumentalities of the Tribe (except where specifically provided for by waiver of sovereign immunity); or

2. Persons not liable as provided for in section 200.303.

200.702 Recovery for Remedial Actions

Recovery shall be based on such equitable factors as the Tribal Court, or another court of competent jurisdiction determines appropriate. Natural resource damages paid to the Tribe under this Code may be recovered. Remedial Action costs shall include reasonable Attorneys' fees and expenses. Recovery of Remedial Action costs shall be limited to those Remedial Actions that, when evaluated as a whole, are the substantial equivalent of a Department conducted or Department supervised Remedial Action. Substantial equivalence shall be determined by the Tribal Court, or by a court of competent jurisdiction, with reference to this Code. An action under this section may be brought after Remedial Action costs are incurred but must be brought within three (3) years from the date Remedial Action confirms cleanup standards are met. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs.

CHAPTER VIII: REMEDIAL ACTIONS – EXEMPTION FROM PROCEDURAL REQUIREMENTS

200.801 Exemptions from Procedural Requirements of Otherwise Applicable Tribal Laws

A Person conducting a Remedial Action at a Facility under a Consent Decree, Order, or Agreed Order, and the Department when it conducts a Remedial Action, are exempt from the procedural requirements of all otherwise applicable Tribal laws.

200.802 Compliance with Substantive Requirements of Otherwise Applicable Tribal Laws

The Department shall ensure compliance with the substantive provisions of all otherwise applicable Tribal laws. The Department shall establish procedures for ensuring that such Remedial Actions comply with the substantive requirements adopted pursuant to such laws. The procedures shall



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provide an opportunity for comment by the public and by the Tribal agencies that would otherwise implement the laws referenced in this section.

200.803 Waiver of Exemptions from Procedural Requirements

An exemption in this section or in any other applicable Tribal law shall not apply if the Department determines that the exemption would result in loss of approval from a federal agency necessary for the Tribe to administer any federal law, including RCRA; the *Clean Water Act*, 33 U.S.C. § 1251, *et seq.*; *the Clean Air Act*, 42 U.S.C. § 7622, *et seq.*; and the *Coastal Zone Management Act*, 16 U.S.C. § 1451, *et seq.* Such a determination by the Department shall not affect the applicability of the exemptions to other statutes specified in this section.

200.804 Protection of Archaeological, Historical, and Cultural Properties and Resources

Because of the irreplaceable nature of archeological, historical, cultural, and sacred sites located on the Lac du Flambeau Indian Reservation, the Tribal Council has implemented various measures pursuant to Chapter 66 of the Tribal Code to ensure these valuable resources, the environment, and personal property rights are protected and preserved. To the extent possible, any actual or potential Releases of Hazardous Substances in such sensitive areas (as that term is defined in Chapter 66) should be addressed in compliance with the provisions of both Chapter 66 and this Code. In the event of a conflict between these two chapters of the Tribal Code, this Code shall prevail.

1. In the event of an actual or potential Release of Hazardous Substances in a sensitive area, the Tribal Natural Resources Department and the Tribal Response Program should be notified immediately. These two departments will immediately notify the Tribal Historic Preservation Office of the actual or potential Release.

2. The Tribal Historic Preservation Office and the Tribal Natural Resources Department will determine whether the Release threatens a sensitive area.

a. If the Release does not threaten a sensitive area, the Tribal Natural Resources Department will assume jurisdictional authority for the Site and proceed with appropriate remedial response actions pursuant to this Code.

b. If the Release does threaten a sensitive area, all response and Remedial Actions shall be undertaken pursuant to this Code, but may be modified in response to the unique attributes of the sensitive area that has been adversely impacted. In addition, all such actions may be subject to increased oversight by both the Department and the Tribal Historic Preservation Office, and require the approval of both the Tribe's Conservation Code Committee and Historic Preservation Cultural Committee before any such actions may be undertaken.

3. Damages or injury to such archeological, historical, cultural and sacred sites are considered natural resource damages and the Tribe shall take any action necessary to recover for such injuries or losses.

200.805 Technical and Administrative Support Costs



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Nothing in this section is intended to prohibit implementing agencies from charging a fee to the Person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the Remedial Action.

## CHAPTER IX: CLEANUP STANDARDS

### 200.901 Groundwater and Soil Cleanup Standards

The cleanup standards for groundwater and soil enforced by the Department hereunder shall be those standards set forth in Appendix A and Appendix B to this Code, which by this reference are incorporated herein and made part of this Code.

### 200.902 Surface Water and Sediment Standards

The cleanup standards for surface water and sediments, enforced by the Department hereunder, shall be the more stringent of either the narrative standards set forth in Section 110.8.A and 110.8.B of this Code or other applicable numerical standards adopted by the Tribal Council.

### 200.903 Application of Standards

Background levels will be determined by the Department.

### 200.904 Development of Cleanup Standards

The Department shall develop surface water and sediment cleanup standards for the Lac du Flambeau Indian Reservation. In developing these standards, the Department may consult with tribal, state and federal agencies, institutions of higher learning, and other entities with expertise in toxic cleanup and human or environmental toxicology in order to determine clean up levels that are protective of human health (consistent with Tribal practices and consumptive uses) and the environment.



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## APPENDIX A

### Groundwater Cleanup Standards

The following chart establishes the minimum numerical cleanup levels for groundwater in terms of amount of individual Hazardous Substance per unit volume for the hazardous substances listed. These cleanup levels shall remain in effect until amended by the Department. The Department may also establish more stringent cleanup levels for a specific Site when, based on a Site specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

For substances not listed below, the Department shall refer to and apply the narrative definition of "Hazardous Substance," as set forth in Section 200.110.8.A and 110.8.B.

| Groundwater Cleanup Standards | Cleanup Standard | CAS NO. |
|---|---|---|
| Substance | micrograms per liter (except as noted) | |
| Acetone | 1000 | 67-64-1 |
| Acenaphthylene | 400 | 208-96-8 |
| Alachlor | 2 | 15972-60-8 |
| Aldicarb | 10 | 116-06-3 |
| Antimony | 6 | 7440-36-0 |
| Anthracene | 3000 | 120-12-7 |
| Arsenic | 10 | 7440-38-2 |
| Asbestos | 7 million fibers per liter (MFL) | |
| Atrazine, total chlorinated residues | 3 | 1912-24-9 |
| Bacteria, Total Coliform | 0 | |
| Barium | 2 milligrams/liter | 7440-39-3 |
| Bentazon | 300 | 25057-89-0 |
| Benzene | 5 | 71-43-2 |
| Benzo(b)fluoranthene | 0.2 | 205-99-2 |
| Benzo(a)pyrene | 0.2 | 50-32-8 |
| Beryllium | 4 | 7440-41-7 |
| Boron | 960 | 7440-42-8 |
| Butylate | 67 | 2008-41-5 |
| Cadmium | 5 | 7440-43-9 |
| Carbaryl | 960 | 63-25-2 |
| Carbofuran | 40 | 1563-66-2 |
| Carbon disulfide | 1000 | 75-15-0 |
| Carbon tetrachloride | 5 | 56-23-5 |
| Chloramben | 150 | 133-90-4 |
| Chlordane | 2 | 57-74-9 |
| Chloroethane | 400 | 75-00-3 |



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| | | |
|---|---|---|
| Chloroform | 6 | 67-66-3 |
| Chloromethane | 3 | 74-87-3 |
| Chromium | 50 | 7440-47-3 |
| Chrysene | 0.2 | 218019 |
| Cobalt | 40 | 7440-48-4 |
| Copper | 1300 | 7440-50-8 |
| Cyanazine | 1 | 21725-46-2 |
| Cyanide | 200 | |
| Dacthal | 4 mg/L | 1861-32-1 |
| DDT | 0.1 | 50-29-3 |
| 1,2-Dibromoethane (EDB) | 0.05 | 106-93-4 |
| Ethylene dibromide | 0.05 | 106-93-4 |
| 1,2-Dibromo-3-chloropropane (DBCP) | 0.2 | 96-12-8 |
| Di-*n*-butyl Phthalate | 100 | 84-74-2 |
| Dicamba | 300 | 1918-00-9 |
| 1,2-Dichlorobenzene | 600 | 95-50-1 |
| 1,3-Dichlorobenzene | 1250 | 541-73-1 |
| 1,4-Dichlorobenzene | 75 | 106-46-7 |
| Dichlorodifluoromethane | 1000 | 75-71-8 |
| 1,1-Dichloroethane | 850 | 75-34-3 |
| 1,2-Dichloroethane | 5 | 107-06-2 |
| 1,1-Dichloroethylene | 7 | 75-35-4 |
| 1,2-Dichloroethylene (cis) | 70 | 156-59-2 |
| 1,2-Dichloroethylene (trans) | 100 | 156-60-5 |
| 2,4-Dichlorophenoxyacetic Acid (2,4-D) | 70 | 94-75-7 |
| 1,2-Dichloropropane | 5 | 78-87-5 |
| 1,3-Dichloropropene (cis/trans) | 0.2 | 26952-23-8 |
| Di (2-ethylhexyl) phthalate | 6 | 117-81-7 |
| Dimethoate | 2 | 60-51-5 |
| 2,4-Dinitrotoluene | 0.05 | 121-14-2 |
| 2,6-Dinitrotoluene | 0.05 | 606-20-2 |
| Dinoseb | 7 | 88-85-7 |
| Dioxin (2, 3, 7, 8-TCDD) | 0.00003 | 1746-01-6 |
| Endrin | 0.2 | 72-20-8 |
| EPTC | 250 | 759-94-4 |
| Ethylbenzene | 700 | 100-41-4 |
| Ethylene glycol | 6 mg/L | 107-21-1 |
| Fluoranthene | 400 | 206-44-0 |
| Fluorene | 400 | 86-73-7 |
| Fluorotrichloromethane | 3490 | 75-69-4 |
| Formaldehyde | 1000 | 50-00-0 |
| Heptachlor | 0.4 | 76-44-8 |
| Heptachlor epoxide | 0.2 | 1024-57-3 |
| Hexachlorobenzene | 1 | 118-74-1 |
| N-Hexane | 600 | 110-54-3 |
| Lead | 15 | 7439-92-1 |
| Lindane (hexachlorocyclohexane) | 0.2 | 608-73-1 |

| | | |
|---|---|---|
| Mercury | 2 | 7439-97-6 |
| Methanol | 5000 | 67-56-1 |
| Methoxychlor | 40 | 72-43-5 |
| Methylene chloride | 5 | 45-09-2 |
| Methyl ethyl ketone (MEK) | 460 | 78-93-3 |
| Methyl isobutyl ketone (MIBK) | 500 | 108-10-1 |
| Methyl tert-butyl ether (MTBE) | 60 | 1634-04-4 |
| Metolachlor | 15 | 51218-45-2 |
| Metribuzin | 80 | 21087-64-9 |
| Monochlorobenzene | 100 | 108-90-7 |
| Naphthalene | 40 | 91-20-3 |
| Nickel | 100 | 7440-02-0 |
| Nitrate (as N) | 10 mg/L | 14797-55-8 |
| Nitrate + Nitrite (as N) | 10 mg/L | |
| Nitrite (as N) | 1 mg/L | 14797-65-0 |
| N-Nitrosodiphenylamine | 7 | 86-30-6 |
| Pentachlorophenol (PCP) | 1 | 87-86-5 |
| Perchlorates | 1 | |
| Phenol | 6 mg/L | 108-95-2 |
| Picloram | 500 | 01918-02-1 |
| Polychlorinated biphenyls (PCBs) | 0.03 | |
| Prometon | 90 | 1610-18-0 |
| Pyrene | 250 | 129-00-0 |
| Pyridine | 10 | 110-86-1 |
| Selenium | 50 | 7782-49-2 |
| Silver | 50 | 7440-22-4 |
| Simazine | 4 | 122-34-9 |
| Styrene | 100 | 100-42-5 |
| 1,1,1,2-Tetrachloroethane | 70 | 630-20-6 |
| 1,1,2,2-Tetrachloroethane | 0.2 | 79-34-5 |
| Tetrachloroethylene | 5 | 127-18-4 |
| Tetrahydrofuran | 50 | 109-99-9 |
| Thallium | 2 | 7440-28-0 |
| Toluene | 1 mg/L | 108-88-3 |
| Toxaphene | 3 | 8001-35-2 |
| 1,2,4-Trichlorobenzene | 70 | 120-82-1 |
| 1,1,1-Trichloroethane | 200 | 71-55-6 |
| 1,1,2-Trichloroethane | 5 | 79-00-5 |
| Trichloroethylene (TCE) | 5 | 79-01-5 |
| 2,4,5-Trichlorophenoxy-propionic acid (2,4,5-TP) | 50 | 93-72-1 |
| 1,2,3-Trichloropropane | 60 | 96-18-4 |
| Trifluralin | 7.5 | 1582-09-8 |
| Trimethylbenzenes | 480 | |
| Vanadium | 30 | 7440-62-2 |
| Vinyl chloride | 0.2 | 75-01-4 |
| Xylene | 10 mg/L | 133-02-07 |

| | | |
|---|---|---|
| Total Petroleum Hydrocarbons | 1000 | |
| GRO | 1000 | |
| DRO | 1000 | |

# LAC DU FLAMBEAU TRIBAL HAZARDOUS SUBSTANCE CONTROL CODE

## APPENDIX B

### Soil Cleanup Standards

The following chart establishes the minimum cleanup levels for soil in terms of amount of individual Hazardous Substance per unit volume for the Hazardous Substances listed. These cleanup levels shall remain in effect until amended by Department. The Department may also establish more stringent cleanup levels for a specific Site when, based on a Site specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

For substances not listed below, the Department shall refer to and apply the narrative definition of "Hazardous Substance," as set forth in Section 200.110.8.A and 110.8.B.

| Soil Cleanup Standards | Cleanup Standard | CAS NO. |
|---|---|---|
| Substance | mg/kg | |
| Arsenic, Total | 0.039 | 7440-38-2 |
| Benzene | 0.0055 | 71-43-2 |
| Cadmium | 8 | 7440-43-9 |
| Chromium VI | 14 | 7440-47-3 |
| 1,2Dichloroethane | 0.0049 | 107-06-2 |
| Ethylbenzene | 2.9 | 100-41-4 |
| Lead | 50 | 7439-92-1 |
| Mercury | 1 | 7439-97-6 |
| PCBs (total) | 1 | |
| Toluene | 1.5 | 108-88-3 |
| Xylene | 4.1 | 1330-20-7 |
| GRO | 100 | |
| DRO | 100 | |
| TPH | 100 | |
| total pesticides | 1 | |



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