

## **Title XXII - Fort Peck Underground Storage Tank Code**

- Sec. 101 Short Title
- Sec. 102 Findings and purpose
- Sec. 103 Definitions
- Sec. 104 Applicability
- Sec. 105 Powers of Office of Environmental Protection
- Sec. 106 Administrative rules
- Sec. 107 Inventory; compliance monitoring
- Sec. 108 Unauthorized underground storage tanks prohibited
- Sec. 109 Permits; requirement for licensed installer
- Sec. 110 Exemptions
- Sec. 111 Permits: applications
- Sec. 112 Licensing of installers
- Sec. 113 Grounds for denying, modifying, suspending or revoking an installer license
- Sec. 114 Inspections
- Sec. 115 Underground Storage Tank Release Report
- Sec. 116 Administrative enforcement
- Sec. 117 Injunctions
- Sec. 118 Imminent hazard
- Sec. 119 Cleanup Orders
- Sec. 120 Civil penalties
- Sec. 121 Criminal penalties
- Sec. 122 Administrative penalties
- Sec. 123 Procedures for obtaining reimbursement of eligible expenses caused by a release from a petroleum storage tank
- Sec. 124 Other authorities unaffected
- Sec. 125 Construction in event of conflict; remedies cumulative
- Sec. 126 Compliance with other laws
- Sec. 127 Underground storage tank account
- Sec. 128 Cooperative agreements
- Sec. 129 Appeals
- Sec. 130 Public hearings

### **Sec. 101. Short title.**

This title shall be known as the "Fort Peck Underground Storage Tank Code."

### **Sec. 102. Findings and purpose.**

Leaking underground storage tanks containing petroleum products and hazardous substances are a significant source of underground contamination and a potential hazard for fire and explosion. The federal Resource Conservation and Recovery Act of 1976, as amended, creates a regulatory program for the tanks. The purpose of this code is to authorize the Fort Peck Office of Environment Protection to establish, administer, and enforce an underground storage tank leak prevention program on the Reservation and to provide for the proper installation or closure of

underground storage tanks by qualified persons.

**Sec. 103. Definitions.**

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the Montana Petroleum Tank Release Compensation Board.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death, that results from the physical injury, sickness or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(6) "Corrective action plan" means a plan or set of plans designed to define the nature, extent, and magnitude of contamination from a release and identify threats to public health, welfare and the environment; and also to describe the work necessary to investigate, monitor, clean up, restore, abate, mitigate, remove or otherwise respond to and remediate a release. The term "corrective action plan" refers to either or both of two types of plans for responding to a release: a remedial investigation phase work plan or a cleanup phase work plan.

(7) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards and regulations of the OEP and the BIA. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(8) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the Reservation or under the jurisdiction of the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(9) "Fund" means the Montana Petroleum Tank Release Cleanup Fund.

(10) "Indian" means any person who

(a) is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation;

(b) holds, or is recognized by the Secretary of the Interior as eligible to hold, trust or restricted property on the Fort Peck Indian Reservation; or

(c) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "Installation" or "to install" means

(a) the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents or in-tank liquid-level monitoring systems. Installation also means repair or modification of a leak detection device that is external to and not attached to

the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) It does not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(12) "Installer" means an individual who installs or closes underground storage tank systems.

(13) "License" means a license issued by the OEP under Sec. 112 to conduct the installation or closure of underground storage tank systems or under Sec. 114 to inspect underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(14) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(15) "Non-Indian" means any person not an Indian.

(16) "OEP" means the Fort Peck Office of Environmental Protection.

(17) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(18) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances. "Owner" also means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. It does not include a person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(19) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), joint venture, sole proprietorship, or governmental or private entity.

(20) "Petroleum" or "petroleum product" includes gasoline, crude oil, fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute), or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(21) "Petroleum storage tank" or PST means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in this Section;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (b)

and

(e), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

or

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.).

(22) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(23) "Regulated substance" means

(a) a "hazardous substance" which means

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal Environmental Protection Agency pursuant to section 102 of CERCLA;

(iii) any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act;

(iv) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(v) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

The term "hazardous substance" does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance as provided herein) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas; or

(b) petroleum, or petroleum product.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Reservation" means the Fort Peck Indian Reservation as established in the Agreement of December 28 and December 31, 1886 and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(26) "Storage" means the actual or intended containment of regulated substances either on a temporary basis or for a period of years.

(27) "Underground storage tank", "UST" or "underground storage tank system" means

(a) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(b) any underground pipes used to contain or transport a regulated substance and are connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground.

(c) It includes a leak detection device that is external to and not attached to an underground storage tank system.

(d) It does not include:

(i) a septic tank;

(ii) a pipeline facility, including gathering lines regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.) or the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.);

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas

production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in (d)(i) through (d)(vi) of this section.

**Sec. 104. Applicability.**

This title shall apply to all Indian persons who own, operate, install or remove underground storage tank systems (UST) and petroleum storage tanks (PSTs) within the Reservation and to all non- Indian persons who own, operate, install or remove UST systems and PSTs on trust and/or restricted property on the Reservation, except for criminal penalties. It does not apply to non-Indian persons who own, operate, install or remove UST systems and PSTs which are located within the Reservation but are not located on trust or restricted property.

**Sec. 105. Powers of Office of Environmental Protection.**

The OEP may:

(1) administer and enforce the provisions of this code, any rules implementing it and orders and permits issued pursuant to it;

(2) enter and inspect the premises or any appurtenant property on the Reservation of an owner or operator at any time to insure compliance with laws or rules pertaining to underground storage tank systems. The OEP may also have access to and copy any records relating to regulated substances for the purposes of developing rules under this code or enforcing this code, rules adopted under it, or a permit or an order issued under this code.

(3) accept and administer grants from the federal government and other sources;  
and

(4) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling of any regulated substance.

**Sec. 106. Administrative rules.**

The OEP may adopt rules implementing this code. Such rules shall be at least as stringent as federal requirements, and shall include:

(1) Reporting by owners and operators;

(2) Financial responsibility;

(3) Release detection, prevention and corrective action;

(4) Standards for design, construction, installation, and closure;

(5) Standards for upgrading existing underground storage tank systems, general operating requirements and maintenance;

(6) Requirements for issuance, denial, renewal, modification, suspension and revocation of permits for the installation and closure of underground storage tank systems, on the Reservation and licenses for installers and inspectors;

(7) Requirements for examination and training of inspectors and installers;

(8) Requirements for qualifications of inspectors, use of inspectors and methods for conducting an inspection;

(9) Development of a schedule of fees, including fees for licenses, license renewals,

permits, and inspections;

(10) Requirements for approval of corrective action plans;

(11) The time between filing of a permit application with the OEP and the installation or closure of a tank;

(12) Procedures, terms and conditions by which owners and operators may seek reimbursement from Montana Petroleum Tank Release Cleanup Fund;

(13) A penalty schedule and a system for assessing administrative penalties, notice, and appeals.

**Sec. 107. Inventory: compliance monitoring.**

(1) The OEP may conduct an inventory of sites and locations on the Reservation where owners and operators have stored regulated substances in underground storage tanks.

(2) The OEP may, as a condition of a permit, require the owner or operator of an underground storage tank system to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this code, rules adopted under this code, any order of the OEP, and permit conditions.

(3) The OEP may require the owner or operator of an underground storage tank system to submit reports on such compliance monitoring activities, including notice to the OEP of any noncompliance with permit conditions, rules adopted under this code, the provisions of this code, or any orders of the OEP.

**Sec. 108. Unauthorized underground storage tanks prohibited.**

A person shall not own or operate an underground storage tank system on the Reservation unless he or she complies with the requirements of this code and any rules adopted by the OEP for the installation, operation and closure of underground storage tank systems.

**Sec. 109. Permits: Requirement for licensed installer.**

(1) A person may not install or close, or cause to be installed or closed, an underground storage tank system on the Reservation without a permit issued by the OEP as provided in this code.

(2) In addition, an owner or operator on the Reservation must obtain the services of a licensed installer for the installation or closure of an underground storage tank system, unless the installation or closure is:

(a) inspected by the OEP as provided in Sec. 114, Inspections; or

(b) exempt as provided in Sec. 110, Exemptions.

**Sec. 110. Exemptions.**

The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank but is not required to obtain the services of a licensed installer.

**Sec. 111. Permits: applications.**

(1) Before the installation or closure of an underground storage tank system on the Reservation, the owner or operator or the owner's or operator's designated licensed installer or remover shall file a permit application with the OEP on forms provided by the OEP. The OEP may provide by rule for emergency permits to apply to emergency conditions pertaining to the

installation or closure of underground storage tank system.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

- (a) the date of the underground storage tank system installation or closure;
- (b) the location of the underground storage tank system installation or closure;
- (c) the type of construction of the underground storage tank system;
- (d) the contents of the underground storage tank system being closed or the

anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or the estimated date for OEP inspection if no licensed installer will be installing or closing the underground storage tank system.

(3) After receipt of a completed application that meets the requirements of this code and any rules adopted, the OEP shall issue the permit. The decision of the OEP shall be final and may be appealed as provided in Sec. 129, Appeals of this code.

#### **Sec. 112. Licensing of installers.**

(1) An installer may not install or close an underground storage tank system on the Reservation unless he or she has a valid license issued by the OEP.

(2) The OEP shall grant an installer a license if the installer demonstrates competency and experience in the installation and closure of underground storage tank systems, passes a written examination conducted by the OEP (or by the State of Montana) and pays the license fee established by OEP rule.

(3) The OEP may conduct written examinations to qualify individuals for installer licenses and provide public notice of the examinations.

(4) An underground storage tank system installer license is valid for up to three years and is subject to periodic renewal as prescribed by OEP rule.

(5) As a condition of renewal, the OEP may require that an installer demonstrate continuing competency in the installation and closure of tank systems.

(6) An installer need not be an Indian to qualify for a license.

#### **Sec. 113. Grounds for denying, modifying, suspending or revoking an installer license.**

(1) The OEP may deny, modify, condition, suspend or revoke a license if the installer:

- (a) fails to achieve a passing grade on a written examination;
- (b) fails to pay a license fee;
- (c) commits fraud or deceit in the license application;
- (d) has had a similar license suspended or revoked by another jurisdiction; or
- (e) violates any tribal, state or federal law, rule, permit or order relating to the

installation or closure of an underground storage tank system.

(2) If the OEP modifies, conditions, suspends or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may appeal any such action of the OEP to the Tribal Court of Appeals as provided in Sec. 129, Appeals.

#### **Sec. 114. Inspections.**

(1) Compliance inspections.

(a) The OEP or any person designated by it, at any reasonable time and upon presentation of credentials, may enter and inspect the property, premises, place or any appurtenant

property on the Reservation of an owner or operator at any time to insure compliance with tribal and federal laws or rules, permits or orders pertaining to underground storage tank systems. The OEP shall also have access to and copies of any records relating to the underground storage tank system.

(b) In the course of an inspection under this section, the employee or person designated by OEP may take samples of any substances, including samples from any soil or ground water or samples of any containers or labeling for the substances. If the employee or person designated by the OEP takes a sample of any regulated substance, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

(2) Installation or closure inspections.

(a) After being issued a permit, an owner or operator may obtain an inspection by the OEP or any person designated by it instead of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the OEP of the date and location of the underground storage tank system installation or closure and shall establish with the OEP the time when an inspection may be conducted.

(b) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(c) The owner or operator must pay an inspection fee to the OEP to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(d) An owner or operator must keep a copy of an installation inspection report on file for as long as the OEP requires by rule. An owner or operator must keep a copy of a closure inspection report for three years after the date of closure.

(e) Tribal or federal officials, such as health officers, sanitarians, fire officials or other persons designated or hired by the OEP, may conduct inspections on behalf of the OEP.

(3) The Tribes may contract with the EPA and the Montana Department of Health and Environmental Sciences (Department) to obtain the services of inspection officials licensed by the Department to conduct the Tribes' inspections. State inspection officials acting in this capacity shall act as contractors of the Tribes, not as officials of the State, and the OEP shall issue a tribal inspector's license to each such inspector. Any rights responsibilities, or conditions of tribal inspectors licenses shall be contained in the contract.

**Sec. 115. Underground storage tank release report.**

If an owner or operator of an underground storage tank system on the Reservation discovers or is provided with evidence that the tank may have released a regulated substance, he or she must immediately notify the OEP that a release may exist.

**Sec. 116. Administrative enforcement.**

(1) When the OEP believes that a person has violated this code, a rule adopted under it, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the provision of this code, rule or permit alleged to have been violated and the facts which constitute the violation. The notice may include an order to provide information



pertaining to installation or closure or an order to take necessary corrective action within a reasonable period of time as stated in the order. The notice and order must be signed by the Director of OEP and may be served by certified mail or in person by a member of the OEP upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the OEP. On receipt of the request, the OEP shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing, the OEP finds that a violation has occurred, it shall either affirm or modify the order previously issued. An order issued by the OEP may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the OEP finds a violation has not occurred, it shall rescind the order. Decisions of the OEP shall be final and may be appealed to the Tribal Court of Appeals as provided in Sec. 129, Appeals.

(3) In addition to or instead of issuing an order under subsection (1), the OEP may either:

(a) require the alleged violator to appear before the OEP by subpoena for a hearing at a specified time and place to answer the charges or to provide information regarding the violation or its impact on public health and welfare or the environment;

(b) initiate action under Sec. 117. Injunctions, Sec. 118. Imminent hazard, Sec. 120. Civil Penalties, or Sec. 121, Criminal Penalties; or

(c) assess administrative penalties under Sec. 122 and issue corrective action orders.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the OEP, the OEP may apply to the Tribal Court for an order to compel compliance with the subpoena or the giving of testimony. The Court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the Court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in the Tribal Court.

(5) This section does not prevent the OEP from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

#### **Sec. 117. Injunctions.**

The OEP may institute and maintain actions in the Tribal Court for injunctive relief as provided in the Fort Peck Code of Justice, Title VIII, Sec. 301 and Secs. 401-403, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering public health or causing damage to the environment;

(2) enjoin a violation of this code, or rule adopted under this code, or order of the OEP, or a permit provision; or

(3) require compliance with this code, a rule adopted under this code, an order of the OEP or a permit provision.

#### **Sec. 118. Imminent hazard.**

Upon receipt of evidence that the installation, closure or operation of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the OEP may commence legal or administrative proceedings to immediately abate the danger or to restrain, order or enjoin any person from causing the danger. The OEP may take any

other appropriate action as necessary, including issuing orders to protect the public health and environment.

**Sec. 119. Cleanup orders.**

The OEP may issue a cleanup order to any person who has released or deposited any regulated substance into or onto any land or water in an unlawful or unapproved manner, or so as to result in unlawful or unapproved disposal of a regulated substance. The order shall direct the person to clean up and remove the regulated substance, treat the regulated substance so as to render it nonhazardous or to take such other actions as may be considered reasonable by the OEP.

**Sec. 120. Civil penalties.**

(1) Any person who violates any provision of this code, a rule adopted under it, an order of the OEP or a permit is subject to a civil penalty not to exceed \$5,000 per violation. If an installer who is an employee is in violation, the employer of that installer is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act of the employee. Each day of violation constitutes a separate violation.

(2) The OEP may institute and maintain in the name of the Tribes any enforcement proceedings under this section in the Tribal Court.

(3) Action under this section does not bar enforcement of this code, rules adopted under it orders or permits, injunctions, or action under Sec. 121, Criminal Penalties.

(4) Money collected under this section shall be deposited in the tribal treasury.

**Sec. 121. Criminal penalties.**

(1) Any Indian person who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in Sec. 109, Permits; any Indian installer who knowingly installs or closes an underground storage tank system without being licensed; or any Indian person who knowingly makes any false statements or representations in any application, permit, report, licensing form or other document filed or maintained as required by this code or required by rules adopted under this code is guilty of a Class A Misdemeanor. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of this code, rules adopted under it, orders or terms of a license or permit by injunction or other appropriate remedy.

(3) An Indian person who knowingly misrepresents the date of discovery of a release from a petroleum storage tank, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under this code is guilty of a Class A Misdemeanor.

**Sec. 122. Administrative penalties.**

(1) A person who violates any of the provisions of this code or any rules adopted under it or a permit provision may be assessed and ordered by the OEP to pay an administrative penalty not to exceed \$500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation of each day it remains uncorrected constitutes a separate violation. The OEP may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by this code.

(2) When the OEP assesses an administrative penalty under this section it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this Chapter, service by mail is complete on the day of mailing. The notice must state:

- (a) the provision alleged to be violated;
- (b) the facts alleged to constitute the violation;
- (c) the amount of the administrative penalty assessed under this section;
- (d) the amount, if any, of the penalty to be suspended upon correction the condition that caused the assessment of the penalty;
- (e) the nature of any corrective action the OEP requires, whether or not a portion of the penalty is to be suspended;
- (f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (g) the right to a hearing before OEP to mitigate the penalty assessed and the time, place, and nature of any hearing, and the right to appeal the final decision of the OEP to the Tribal Court of Appeals; and
- (h) that a formal proceeding may be waived.

(3) The OEP shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. This subsection does not apply until the OEP gives written notice of the hearing, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this code service by mail is complete on the day of mailing. The hearing notice must state:

- (a) the provision allegedly violated;
- (b) the facts that constitute the alleged violation;
- (c) the specific nature of any corrective action the OEP requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The OEP shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the OEP shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the OEP shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the OEP is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the OEP may take action in the Tribal Court to recover the penalty amount and any additional amounts assessed or sought under this code.

(6) Action under this section does not bar other action under this code, or any other remedy available to the OEP for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the tribal treasury.

**Sec. 123. Procedures for obtaining reimbursement of eligible expenses caused by a release from a petroleum storage tank.**

(1) An owner or operator may submit a claim to the OEP for reimbursement by the Montana Petroleum Tank Release Compensation Board from the Montana Petroleum Tank Release Cleanup Fund for all eligible expenses, provided that:

- (a) the State of Montana and the Tribes have in force a state tribal agreement to establish the procedures, terms and conditions by which such reimbursement will be available; and
- (b) the release was discovered on or after March 3, 1994;
- (c) the OEP is notified of the release in the manner and within the time provided by law or rule;
- (d) the OEP has been notified of the existence of the tank in the manner required by OEP rule or has waived the requirement for notification;
- (e) the release was an accidental release;
- (f) with the exception of the release, the operation and management of the tank complied with applicable tribal and federal laws and rules when the release occurred and remained in compliance following detection of the release;
- (g) the owner or operator complies with the provisions of this section and the applicable sections of state law.

(2) The owner or operator submitting a claim to OEP for reimbursement for eligible costs shall comply with the following procedures:

- (a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner or operator's petroleum storage tank, the owner or operator shall immediately notify the OEP of the release and conduct an initial response to the release in accordance with tribal and federal laws and rules to protect public health and safety and the environment.
- (b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the OEP, and, as determined necessary by the OEP, prepare and submit for approval by the OEP a corrective action plan that conforms with tribal and federal corrective action requirements.
- (c) The OEP shall review the corrective action plan and either approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan so approved by the OEP is the proposed corrective action plan of the OEP.
- (d) The OEP shall notify the owner or operator and the Underground Storage Tank Program Office of the State Department of Health and Environmental Service of its proposed approval of a corrective action plan.
- (e) The OEP shall approve the correction action plan, as provided in the state-tribal agreement and any joint implementing regulations or memorandum of understanding.
- (f) The owner or operator shall implement the approved plan. The OEP may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under this code and other applicable law and rules.

**Sec. 124. Other authorities unaffected.**

Payment of reimbursement, approval of a corrective action plan, or other action of the OEP under this code does not affect the authority of the OEP or any other tribal agency to pursue an action authorized by this code, or any other law or rule that applies to releases from petroleum storage tanks.

**Sec. 125. Construction in event of conflict; remedies cumulative.**

(1) The provisions of this code and rules promulgated under it govern if they conflict with other provisions of tribal law or any action taken by the OEP under such provisions.

(2) The remedies provided for in this code are cumulative with other remedies provided by law.

**Sec. 126. Compliance with other laws.**

Nothing in this code limits or alters the responsibility of an owner, operator, or installer to comply with all other tribal laws or rules.

**Sec. 127. Underground storage tank account.**

All revenues from underground storage tank permits, licenses and fees shall be deposited in a special revenue fund for underground storage tanks. The fund shall also receive corrective action costs, damages, and penalties recovered under Section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended. Funds shall be used for implementing the underground storage tank program.

**Sec. 128. Cooperative agreements.**

The Tribes may enter cooperative agreements or contracts with the federal government and the State of Montana to coordinate the regulation of underground storage tanks and to obtain any services necessary to implement this code.

**Sec. 129. Appeals.**

(1) Any party aggrieved by a final decision of the OEP may appeal to the Fort Peck Court of Appeals pursuant to Title II (Courts), Sections 113 and 202 of the Comprehensive Code of Justice.

(2) Copies of the appeal shall be served on the Tribal Chairman and the Director of the OEP. Upon receipt of the complaint the Director of the OEP shall certify to the court the entire record of the proceedings, including all testimony and evidence taken by the OEP.

(3) The Court shall decide the case upon the record certified. The decision of the OEP shall be affirmed unless it is in excess of its authority, arbitrary and capricious, or not supported by substantial evidence.

**Sec. 130. Public hearings.**

(1) The OEP shall schedule a hearing as soon as practicable after receiving a request for a hearing pursuant to the code, and notify the person requesting the hearing. Notice of the hearing shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

(2) The OEP shall compile the administrative record to that date and provide the aggrieved party and any interested party the right to examine and respond to the record prior to the hearing. Thereafter, the Director shall maintain the administrative record and shall include all evidence, written statements, correspondence, hearing record and any other relevant matter. Hearings proceedings shall be recorded.

(3) The Director of the OEP shall preside over any hearing held under this code. The aggrieved party and any interested person shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. The Director shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the OEP in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the OEP only under special conditions or stipulations.

(4) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(5) The OEP may, in addition to the administrative record and the evidence of record at the hearing, rely in its decision upon such Public Information and such of its own expertise as it deems necessary to assist it in making a decision.

(6) The OEP Director may, in his or her discretion, request or permit the parties to submit additional materials or briefs after the hearing.

(7) The OEP Director shall issue a written decision setting forth pertinent findings of fact and an ultimate determination on the subject of the hearing. The decision shall be delivered to all parties by registered mail, return receipt requested.

(8) Petitions for reconsideration.

(a) Within fourteen (14) days after the decision, any party may request the OEP to reconsider the decision. A petition for reconsideration shall be in writing and state concisely the errors in the decision the petitioner claims should be reconsidered.

(b) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(c) The OEP will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. After the hearing, the OEP may affirm, nullify or revise its earlier decision. Any revised decision shall be a final OEP decision for, and may be appealed to the Tribal Court of Appeals as provided in Sec. 129, Appeals of this code.

**(ADOPTED AS PER RESOLUTION NO. 2644-95-2, DATED 02/13/95.)**