

**Red Lake Nation  
Hazardous Substances  
Control Act**

**November 10, 2011  
(with minor revisions 1/23/12)**

**RED LAKE TRIBAL CODE  
TITLE XX - ENVIRONMENTAL PROTECTION  
CHAPTER 1 - HAZARDOUS SUBSTANCES CONTROL ACT**

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## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **2000.01 Title**

This Act may be cited as the Red Lake Hazardous Substances Control Act.

### **2000.02 Definitions**

For purposes of this Act B

1. “Brownfields site” means a site where redevelopment or reuse may be complicated by the presence or potential presence of a hazardous substance or pollutant or contaminant. It does not include a site or facility that is already subject to remediation or corrective action or is in the process of remediation or corrective action under federal or tribal law; a site or facility that is listed or proposed for listing on the National Priorities List under CERCLA; a site or facility subject to RCRA closure requirements; a site or facility that is the subject of an administrative or court order or consent decree; or any portion of a site or facility already receiving funding for cleanup.
2. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, codified at 42 U.S.C. ' ' 9601-9675.
3. “Community collection site” means a site where covered bins or similar containers are provided for use by the community to deposit household waste, but does not include solid waste storage containers placed for individual or clusters of residences or for institutional, commercial, recreational or industrial establishments that service exclusively those residences or establishments.
4. “Construction and demolition debris” means non-hazardous, non-water-soluble waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements, and other structures, including but not limited to steel, glass, brick, concrete, asphalt, roofing materials, pipe, gypsum wallboard and lumber. If construction and demolition debris is mixed with other wastes, whether or not originating from construction projects, it loses its classification as construction and demolition debris. Construction and demolition debris does not include asbestos, waste paints, solvents, sealers, adhesives, and other potentially hazardous materials.
5. “Cultural resource” means any product of human activity or any object or place given significance by human action or belief. Places that may be cultural resources include buildings and other structures, landforms, archaeological sites, traditional cultural properties, and districts that are eligible or potentially eligible for listing on the National Register of Historic Places. Objects that may be cultural resources include artifacts and

other physical remains of human activity, natural objects given significance by human action or belief, human remains and “cultural items” as defined in the Native American Graves Protection and Repatriation Act, and archaeological resources.

6. “Director” means the Director of the Red Lake Environmental Department or his/her designee.
7. “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
8. “Facility” means:
  - a) any facility, 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, transfer station, storage container, motor vehicle, rolling stock, aircraft, or vessel; or
  - b) any area where a hazardous substance, or pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located, but does not include any consumer product in consumer use.
9. “Hazardous substance” means
  - a) any substance designated pursuant to ' 311 of the Clean Water Act, 33 U.S.C. ' 1321(b)(2)(A);
  - b) any element, compound, mixture, solution, or substance designated pursuant to ' 102 of CERCLA, 42 U.S.C. ' 9602;
  - c) any hazardous waste having the characteristics identified under or listed pursuant to ' 3001 of the Solid Waste Disposal Act, 42 U.S.C. ' 6921;
  - d) any toxic pollutant listed under ' 307 of the Clean Water Act, 33 U.S.C. ' 1317(a);
  - e) any hazardous air pollutant listed under ' 112 of the Clean Air Act, 42 U.S.C. ' 7412; and
  - f) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to ' 7 of the Toxic Substances Control Act, 15 U.S.C. ' 2606.



6901-6992k.

17. “Red Lake Environmental Department” or “RLED” means the program within the Red Lake Department of Natural Resources that is responsible, through its Environmental Response Program, for implementing and enforcing this Act.
18. “Red Lake Nation” means the Red Lake Band of Chippewa Indians. When used in terms of territorial jurisdiction, the term means all land within the exterior boundaries of the formal Red Lake Indian Reservation, all tribal trust lands even if outside the formal Reservation boundaries, and all restored parcels of land as defined in the Treaties creating the Reservation and the documents restoring land to the Red Lake Nation, whether or not they have been taken into trust.
19. “Red Lake Nation Council” means the official legislative body of the Red Lake Nation, also known as the Red Lake Tribal Council, which is empowered to adopt policies and enact laws governing the Red Lake Nation.
20. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:
  - a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;
  - b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
  - c) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, 42 U.S.C. s 2011 et seq., if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under ' 170 of such Act, 42 U.S.C. ' 2210, or, for the purposes of this Act, any release of source byproduct or special nuclear material from any processing site designated under the Uranium Mill Tailings Control Act of 1978, 42 U.S.C. ' 7912(a)(1) or ' 7942(a); and
  - d) the normal application of fertilizer.
21. “Responsible party” means a person who:
  - a) owned or operated a facility:

- 1) when the hazardous substance, or pollutant or contaminant, was placed or came to be located in or on the facility;
  - 2) when the hazardous substance, or pollutant or contaminant, was located in or on the facility but before the release; or
  - 3) during the time of the release or threatened release;
- b) owned or possessed the hazardous substance, or pollutant or contaminant, and arranged, by contract, agreement or otherwise, for the disposal, treatment or transport for disposal or treatment of the hazardous substance, or pollutant or contaminant; or
- c) knew or reasonably should have known that waste the person accepted for transport to a disposal or treatment facility, as defined under CERCLA, contained a hazardous substance, or pollutant or contaminant, and either selected the facility to which it was transported or disposed of it in a manner contrary to law.
- d) An owner of a site is not a responsible party with regard to the release or threatened release of a hazardous substance, pollutant or contaminant from a facility in or on the site unless that person:
- 1) was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance, or pollutant or contaminant, at the facility or disposing of waste at the facility, or knowingly permitted others to engage in such a business at the facility;
  - 2) knowingly permitted any person to make regular use of the facility for disposal of waste;
  - 3) knowingly permitted any person to use the facility for disposal of a hazardous substance, or pollutant or contaminant;
  - 4) knew or reasonably should have known that a hazardous substance, or pollutant or contaminant, was located in or on the facility at the time right, title, or interest in the site was first acquired by the person and engaged in conduct associating that person with the release; or
  - 5) took action which significantly contributed to the release after that person knew or reasonably should have known that a hazardous substance, or pollutant or contaminant, was located in or on the facility.

- e) The Red Lake Nation is not a responsible party based solely on its ownership of a site or its status as a lessor or grantor of any land use interest, including but not limited to rights-of-way, easements, and land use permits, or as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance or pollutant or contaminant. The limitations on liability of the Red Lake Nation in this subparagraph shall not apply to enterprises or companies owned, operated, or otherwise affiliated with the Red Lake Nation.
- f) A contractor is not a responsible party, where “contractor” means a person who is not otherwise responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, and who, under contract with another person:
  - 1) performs response actions, including investigative, removal, or remedial actions, to address the release or threatened release pursuant to a plan approved by the Director; or
  - 2) performs other related actions at the site of the release or threatened release, such as site preparation, engineering, construction, and similar actions which the Director approves as part of a response plan or which the Director deems necessary to protect public health or welfare or the environment. For a site with a known release or threatened release, the contractor must have approval from the Director before the contractor commences these actions. For a site with a release or threatened release discovered during the contractor=s performance of these actions, the contractor must have approval from the Director before the contractor performs further such actions at the site after discovery of the release or threatened release.
  - 3) A contractor who causes or contributes to a release or threatened release by an act or omission that is negligent, grossly negligent, or that constitutes intentional misconduct will not be excluded from the definition of “responsible party.”

22. “Site” means an identified area of real property.

23. “Solid waste” means any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, as that term is defined in 40 C.F.R. ' 261.2(a), including solid, liquid, semi-solid, or contained gaseous material resulting from residential, industrial, commercial, and agricultural operations and from community activities, but does not include:

- a) agricultural waste, including, but not limited to, manures and crop residues



- returned to the soil as fertilizer or soil conditioner;
- b) sand and gravel;
  - c) solid or dissolved material in domestic sewage;
  - d) solid or dissolved materials in irrigation return flows;
  - e) industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. ' 1342;
  - f) source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. ' 2011 et seq.;
  - g) densified refuse-derived fuel;
  - h) any other material excluded from the definition of "solid waste" under 40 C.F.R. ' 261.4(a); and
  - i) hazardous waste, as defined in this Act.
24. "Solid waste landfill" or "SWLF" means a discrete area of land containing an excavation (trench) consisting of at least 2 acre, that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. ' 257.2. An SWLF also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, waste tires, construction and demolition debris, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An SWLF may be a new SWLF, an existing SWLF, or a lateral expansion.
25. "Solid waste landfill facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for an SWLF.
26. "Storage" means the accumulation of waste after generation, prior to and following collection, processing, composting, recycling, and transportation, and prior to disposal.
27. "Transfer station" means a site, including a community collection site, at which solid wastes are concentrated for transport to a solid waste handling or disposal facility, but does not include solid waste storage containers placed for individual or clusters of residences or institutional, commercial, recreational or industrial establishments that service exclusively those residences or establishments.
28. "Waste" means both solid waste and hazardous waste.

## **2000.03 Declaration of Policy**

### **Subdivision 1. Legislative Findings**

The Red Lake Nation Council finds and declares that releases of hazardous substances, disposal of both solid and hazardous waste in or on the land without careful planning and management, and open burning of waste can present a danger to public health and welfare and the environment, cause injury to property and property values, and discourage economic development, including by halting or hindering use and re-use of contaminated or otherwise affected sites within the Red Lake Nation; that open dumping is harmful to public health, potentially contaminates drinking water from underground and surface sources, and pollutes the air and the land; and that potentially recoverable material that could be recycled is needlessly buried each year, using scarce land resources, even though methods are available to separate usable materials from solid waste.

### **Subdivision 2. Legislative Purposes**

The Red Lake Nation Council is exercising its governmental authority and obligation to protect the health, safety, welfare, and environment of the Red Lake Nation and to manage, protect, and preserve the resources and general economic security of the Red Lake Nation by enacting this law, which creates a coordinated program for management of hazardous substances within the Red Lake Nation, including:

- a) establishing a voluntary response program to provide for expedited cleanup of contaminated sites and to benefit the public welfare by returning contaminated sites to economically productive uses;
- b) assuring that waste management practices are conducted in a manner that protects human health and the environment and minimizes the need for corrective action at a future date by, among other things, prohibiting open dumping and regulating open burning of waste; and
- c) authorizing the Director to issue guidelines for recycling and reuse, in order to minimize the generation of waste.

### **Subdivision 3. Environmental Response Program**

The Red Lake Nation Council places primary responsibility for the implementation of this Act with the Red Lake Environmental Department, Environmental Response Program.

#### **2000.04      **Applicability****

Except as otherwise provided in this Act, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Red Lake Nation.

#### **2000.05      **Governmental Cooperation and Coordination****

The provisions of this Act may be carried out by agreements between the Red Lake Nation and federal, tribal, state, or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs. The Director also may coordinate on an informal basis with other tribal programs in implementing this Act. The Director shall promptly notify the appropriate tribal and federal natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this Act and shall coordinate the assessments, investigations, and planning under this Act with such tribal and federal trustees.

#### **2000.06      **General Authorities of the Director****

##### **Subdivision 1.      **Powers and Duties****

In carrying out this Act, the Director is authorized to --

- a) promulgate such regulations as are necessary to carry out his or her functions under this Act, pursuant to the provisions of ' 2000.61;
- b) enforce the provisions of this Act and the regulations promulgated hereunder, pursuant to the provisions of subchapter 5;
- c) require monitoring, sampling, assessments, or other studies, and conduct investigations, inspections, and tests, as provided in subchapters 3 and 5;
- d) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities and technical consultants, by contract or otherwise, to carry out the purposes of this Act;
- e) assess fees in connection with the Voluntary Response Program and as otherwise applicable under this Act;
- f) hold hearings related to any aspect of or matter within the authority of this section and, in connection therewith, compel the attendance of witnesses and the production of records;
- g) provide to the public pertinent educational materials and information regarding the voluntary response program and waste management issues;

- h) issue guidelines and encourage voluntary cooperation with the provisions of this Act and any regulations promulgated hereunder, including guidelines regarding recycling and reuse of waste; and
- i) perform such other activities as the Director may find necessary to carry out his or her functions under this Act.

In promulgating regulations under this Act, the Director shall consider but shall not be limited to the relevant factors prescribed by RCRA, CERCLA, and the regulations thereunder, except that regulations prescribed by the Director shall be at least as stringent as those promulgated under RCRA and CERCLA.

**Subdivision 2. Delegation of Authority**

The Director may delegate to any officer or employee of the Red Lake Environmental Department such powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

**Subdivision 3. Use of Funds**

Monies derived from fees and penalties imposed under this Act shall be available solely for the administration and implementation of this Act and the regulations promulgated hereunder. Such funds shall be deposited into a duly established account and expended by the Director for the use of the Environmental Response Program in accordance with an approved budget. Fees collected pursuant to the Voluntary Response Program in ' 2000.42 and the regulations promulgated thereunder shall be used specifically for the voluntary response activities specified in ' 2000.42, Subdivisions 4 and 6. Any monies contained in the account created under this subdivision that remain at the end of the fiscal year shall not revert to the Red Lake Nation=s general fund and shall remain available for appropriation as provided in this subdivision.

**2000.07 Construction of Act**

This Act shall be liberally construed to carry out its purpose. The Director may implement this Act in a phased manner, based on needs and available resources. It is in the Director's discretion to determine which provisions of this Act to implement and in what order, and the Director shall not be required to implement any of the provisions described in this Act by any particular time. The effectiveness and enforceability of this Act shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Act or regulations promulgated hereunder shall be construed to diminish, limit, or otherwise adversely affect any right or remedy held or available to the Red Lake Nation.

**2000.08 Compliance with other Laws and Regulations**

Compliance with this Act and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

**2000.09 Contractual Compliance**

Contracting for the storage, collection, transportation, processing, or disposal of waste shall not relieve the contractor or contractee from responsibility for compliance with the provisions of this Act and the regulations promulgated hereunder.

**2000.10 Severability**

If any provision of this Act, or the application of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of this Act to other persons or circumstances shall remain unaffected.

**SUBCHAPTER 2. PROHIBITED ACTS**

**2000.21 Prohibited Acts**

**Subdivision 1.** It shall be unlawful for any person to:

- a) engage in open dumping, or otherwise dispose of any waste in a place other than a facility which is in compliance with this Act and other applicable laws;
- b) engage in open burning at a transfer station or solid waste landfill facility;
- c) engage in open burning at any location other than a transfer station or solid waste landfill facility without a burning permit, as required by Tribal Code ' 504.05, except that notwithstanding Tribal Code ' 504.05 fires set for cultural or traditional purposes shall not require a burning permit but shall simply require notification to the Red Lake Fire Prevention Program that such burning will take place. Notice is required to ensure that the cultural or traditional burning is not disturbed. This permit exemption for cultural or traditional burning does not relieve any person of the responsibility to keep such fires under control;
- d) engage in open burning of any of the following: household waste, except as provided in subdivision 2 of this section; junked motor vehicles or salvaged materials; tires or rubber materials; plastics, plastic products, or Styrofoam; asphalt or composition roofing; tar, tar paper, petroleum

products or paints; lumber or timbers treated with preservatives; construction debris or demolition waste; pesticides, herbicides, fertilizers or other chemicals; insulated wire; batteries; light bulbs; material containing mercury; asbestos or asbestos-containing materials; pathogenic wastes; hazardous wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. ' ' 6901-6992k, and implementing regulations; manure; and any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned;

- e) dispose of any waste in a manner that will harm the environment, endanger the public health, safety and welfare, or create a public nuisance;
- f) dispose of any waste not defined as solid waste at a solid waste landfill facility or transfer station;
- g) dispose of bulk or non-containerized liquids at a solid waste landfill facility or transfer station;
- h) collect, transport, process, or store waste in any manner or at any facility that is not in compliance with the provisions of this Act, the regulations promulgated hereunder, and any other applicable laws;
- i) fail to report releases of hazardous substances pursuant to ' 2000.31; and
- j) refuse to provide information or documents, grant access, or allow investigations, monitoring, sampling, surveys, testing, or other information-gathering activities to take place pursuant to ' ' 2000.32 and 2000.34.

**Subdivision 2.** A person seeking to dispose on site, other than through open burning, of solid waste generated from a family ranch, camp, or farm may petition the Director in writing for an exemption from the prohibition against open dumping. In ruling on the petition, the Director will consider how close the person is to a transfer station (including a community collection site) or SWLF and whether the on-site disposal would create a public health or environmental hazard or public nuisance. The Director's decision on the petition shall be final and shall not be subject to judicial review. A person seeking to dispose of such solid waste on site through open burning must first apply in writing for and obtain a burning permit from the Red Lake Fire Prevention Program and must comply with all other applicable provisions of tribal law.

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

## **SUBCHAPTER 3. RELEASE REPORTING, MONITORING, AND RESPONSE ACTION REQUIREMENTS AND AUTHORITIES**

### **2000.31 Obligation to Report Releases of Hazardous Substances**

#### **Subdivision 1. Notification of Release**

Any person in charge of or otherwise responsible for a facility shall, as soon as he or she has knowledge of any release (other than a permitted release) of a hazardous substance from the facility in quantities equal to or greater than those determined as reportable quantities under CERCLA ' 102, 42 U.S.C. ' 9602, notify the Brownfields Coordinator, Red Lake Environmental Response Program, within 24 hours of learning of such release. For purposes of this Act, the reportable quantity of petroleum shall be five gallons for releases both on the ground and into water. Whether a release meets or exceeds a reportable quantity shall be determined based on the amount of the hazardous substance released within a 24-hour period. Such person also shall, upon request of the RLED, provide the RLED with any information he has or may reasonably obtain relevant to the release or to a threatened release.

#### **Subdivision 2. Continuous Releases**

Notification need not be given more than annually for a release subject to subdivision 1 of this section when that release is a continuous release, stable in quantity and rate, and notification has already been given for that release pursuant to subdivision 1 for a period sufficient to establish the continuity, quantity and regularity of such release. At such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released above that previously reported, however, notice shall be given immediately pursuant to this section.

#### **Subdivision 3. Penalties for Failure to Notify; Use of Notice**

Any person in charge of a facility from which a hazardous substance is released, other than a permitted release, in a quantity equal to or greater than the reportable quantity defined in subdivision 1 of this section, who fails to notify the RLED pursuant to this section as soon as he or she has knowledge of such release, or who submits in such notification any information which he or she knows to be false or misleading, shall, upon conviction, be fined in accordance with ' 2000.55, subdivision 2 or, if the Red Lake Nation lacks criminal jurisdiction over such person, shall be fined pursuant to ' 2000.55, subdivision 1. Notification received pursuant to this section or information obtained from such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

**Subdivision 4. Registered Pesticide Products**

This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. ' ' 136-136y, or to the handling and storage of such a pesticide product by an agricultural producer.

**2000.32 Access to Information and Property**

**Subdivision 1. Access to Information**

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

- a) the identification, nature, and quantity of hazardous substances, or pollutants or contaminants, which have been or are generated, treated, stored, transported, or disposed of at a site;
- b) the nature or extent of a release or threatened release of a hazardous substance at or from a site;
- c) information relating to the ability of a person to pay for and/or to perform a cleanup; and
- d) information relating to compliance with any requirement of this Act or of any regulation, authorization, or order issued pursuant to this Act.

**Subdivision 2. Access to Site**

- a) The Director or any other duly designated officer, employee, or representative of the Red Lake Nation may enter upon any site at reasonable times if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, or pollutant or contaminant, at the site or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, or pollutant or contaminant, and that a release may have occurred or be occurring at the site.
- b) The Director or any other duly designated officer, employee, or representative may undertake such investigations, monitoring, sampling, surveys, testing, and other information-gathering activities as he or she



may deem necessary or appropriate to identify the existence and extent of the release or threatened release, the source and nature of the hazardous substances, or pollutants and contaminants, involved, and the extent of danger to the public health or welfare or to the environment. If samples are taken, before leaving the premises the Director or other official shall give to the person in charge of the site from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. Also if requested, a copy of the results of any analysis made of such samples shall be furnished promptly to the person in charge.

- c) In addition, the Director or any duly designated officer, employee, or representative may enter upon a site to undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he or she may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to implement and enforce the provisions of this Act.

### **Subdivision 3. Request for Site Assessment**

Any person who is or may be affected by a release or threatened release of a hazardous substance or pollutant or contaminant at a Brownfields site located in the community where the person works or resides may request the Director in writing for a site assessment to be conducted. The Director shall consider any such request and, if the Director finds that such a release or threatened release exists and, in the case of a release of a pollutant or contaminant, presents an imminent and substantial endangerment to the public health or welfare or the environment, the Director shall require such site assessment to be performed pursuant to ' 2000.33 or 2000.52, subdivision 1 or shall perform the site assessment pursuant to subdivision 2 of this section.

### **Subdivision 4. Public Availability of Information**

Any records, reports, or other information obtained under subdivision 1 or 2 of this section shall be available to the public, except that upon a showing satisfactory to the Director that records, reports, or information or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets or other confidential information protected under 18 U.S.C. ' 1905, the Director shall consider such record, report, information, or portion thereof confidential. Such record, report, information, or portion thereof may nevertheless be disclosed to other officers, employees, or authorized representatives of the Red Lake Nation and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. Information required to be made publicly available under CERCLA ' 104(e)(7)(F), 42 U.S.C. ' 9604(e)(7)(F), is not entitled to protection under this subdivision.

## **2000.33      Response Actions Required of a Responsible Party**

### **Subdivision 1.      Order to Respond to Release or Threatened Release**

Whenever there is a release or threatened release from a facility of any pollutant or contaminant that presents an imminent and substantial endangerment to the public health or welfare or the environment or whenever there is a release or threatened release from a facility of a hazardous substance, the Director may order a responsible party, as that term is defined in ' 2000.02, to investigate, remove or arrange for the removal of, provide for remedial action relating to such hazardous substance or pollutant or contaminant, or take any other response measures that the Director deems necessary to protect the public health or welfare or the environment. The order shall be in writing and shall state the action requested, the reasons for the action, and a reasonable time by which the action must be begun and completed, taking into account the urgency of the action for protection of the public health or welfare or the environment.

### **Subdivision 2.      Action to Compel Performance**

When a responsible party fails to take a response action or to make reasonable progress in completing a response action ordered as provided in subdivision 1 of this section, the Tribal Prosecutor or Special Prosecutor, as the case may be, may bring an action pursuant to ' 2000.55 to compel performance of the requested response action. If any person having any right, title, or interest in the site where the facility is located or where response actions are proposed to be taken is not a responsible party with regard to the release or threatened release, that person may be joined as an indispensable party in an action to compel performance in order to assure that the requested response action can be taken on that property by the responsible party or parties.

### **Subdivision 3.      Civil Penalties**

Any responsible party who fails to take reasonable and necessary response actions or to make reasonable progress in completing response actions ordered as provided in subdivision 1 shall forfeit and pay to the Red Lake Nation a civil penalty in an amount to be determined by the court of not more than \$20,000 per day for each day that the responsible party fails to take such action or to make reasonable progress in completing such action. This penalty may be recovered by an action brought by the Tribal Prosecutor or Special Prosecutor, as the case may be, pursuant to ' 2000.55. All penalties recovered under this subdivision shall be deposited in the account established under ' 2000.06, subdivision 3.

### **Subdivision 4.      Cleanup Standards**

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

**Subdivision 5. Public Participation Procedures**

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

**Subdivision 6. Administrative Record**

The Director shall establish an administrative record upon which the Director shall base the selection of the response action. The administrative record shall include all items developed and received under subdivision 5 of this section, and any other items on which the Director relied in selecting a response action.

**Subdivision 7. Injunctive Relief**

The release or threatened release of a hazardous substance or a pollutant or contaminant shall constitute a public nuisance and may be enjoined in an action brought in the name of the Red Lake Nation by the Tribal Prosecutor or Special Prosecutor, as the case may be.

**2000.34 Response Actions by Director**

**Subdivision 1. Cleanup Authority**

Whenever there is a release or substantial threat of release from a facility of any pollutant or contaminant that presents an imminent and substantial endangerment to the public health or welfare or the environment or whenever there is a release or threatened release of a hazardous substance from a facility, the Director is authorized to investigate, remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant or take any other response measures that the Director deems necessary to protect the public health or welfare or the environment. The Director may take such action when one or more of the following situations exist:

- a) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is a responsible party under ' 2000.02 with respect to the release or threatened release and who is capable of carrying out such corrective action properly, either financially or otherwise;
- b) A situation exists which requires prompt action by the Director to protect human health and the environment; and
- c) If a responsible party can be found, that party has failed or refused to comply with an order of the Director under ' 2000.33 or 2000.52 to take corrective action.

The Director may use the authorities provided in ' 2000.32 to identify the existence and extent of the release or threatened release, the source and nature of the hazardous substances or pollutants and contaminants involved, and the extent of danger to the public health or welfare or the environment, and may undertake the various planning and other activities identified in ' 2000.32 to plan and direct a response action, recover the costs of a response action, and enforce the provisions of this Act.

### **Subdivision 2. Limitations on Response**

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

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

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

### **Subdivision 3. Limitation on Liability**

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

**Subdivision 4. Cleanup Standards**

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

**Subdivision 5. Public Participation Procedures**

Before selecting a response action under this section, the Director shall give notice of the proposed action to the public by publication of a notice in a newspaper of general circulation in the affected area, identifying the facility and site concerned and the parties involved and providing a brief analysis of the plans that were considered and the basis for the proposed action. The notice also shall be mailed to all potentially responsible parties known to the Director at the time of the notice, including all persons whom the Director contacted pursuant to subdivision 1 of this section. The notice shall provide a reasonable opportunity for the public to submit written comments on the proposed action and an opportunity for a public hearing in the affected area. The Director shall provide a written response to all significant comments submitted on the proposed action.

**Subdivision 6. Administrative Record**

The Director shall establish an administrative record upon which the Director shall base the selection of the response action. The administrative record shall include all items developed and received under subdivision 5 of this section, and any other items on which the Director relied in selecting a response action.

**Subdivision 7. Liability for Response Costs**

- a) *Liability Generally.* Except as otherwise provided in this section, and notwithstanding any other provision or rule of law, any person who is a responsible party with respect to the release or threatened release of a hazardous substance is strictly liable, jointly and severally, for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

- 1) all reasonable and necessary response costs, administrative expenses, and legal expenses incurred by the Red Lake Nation pursuant to this section; and
  - 2) all damages for any injury to, destruction of, or loss of natural and cultural resources, including the reasonable costs of assessing such injury, destruction, or loss.
- b) *Recovery of Response Costs.* The costs itemized in paragraph (a), plus interest calculated as provided in 42 U.S.C. ' 9607(a), may be recovered in a civil action brought by the Tribal Prosecutor or Special Prosecutor, as the case may be, in the Red Lake Court of Indian Offenses against any person who may be liable under this section. The RLED=s certification of costs shall be prima facie evidence that the costs are reasonable and necessary. A person who conducts a response action under ' 2000.33 also may be liable for response costs under this section, subject to the defenses listed in subdivision (8) of this section.

**Subdivision 8. Defenses to Liability**

- a) There is no liability under this section for response costs or damages that result from the release of a pollutant or contaminant that is not a hazardous substance.
- b) The Red Lake Nation shall not be liable under this section based solely on its ownership of a site where the facility at issue is located or its status as a lessor or grantor of any land use interest, including but not limited to rights-of-way, easements, and land use permits.
- c) A person who accepts only household waste for transport to a treatment or disposal facility is not liable under this section for the release or threatened release of any hazardous substance unless that person knew or reasonably should have known that the hazardous substance was present in the waste.
- d) It is a defense to liability under this section that the release or threatened release was caused solely by:
  - 1) an act of nature;
  - 2) an act of war;
  - 3) an act of vandalism or sabotage; or

- 4) an act or omission of a third party or the plaintiff, where “third party” does not include an employee or agent of the defendant or a person in the chain of responsibility for the generation, transportation, storage, treatment, or disposal of the hazardous substance.

The defenses provided in subparagraphs 3 and 4 apply only if the defendant establishes that the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances which the defendant knew or should have known, and that the defendant took precautions against foreseeable acts or omissions and the consequences that could foreseeably result from those acts or omissions.

- e) It is a defense to liability under this section that:
  - 1) the hazardous substance released was specifically identified in a federal or tribal permit and the release is within the limits allowed in the permit or otherwise conformed with the permit;
  - 2) the release was part of an emission or discharge into the air or water and the emission or discharge was subject to a federal or tribal permit and was in compliance with control rules or regulations adopted pursuant to federal or tribal law;
  - 3) the release was the introduction of any hazardous substance into a publicly owned treatment works and the substance was specified in, and is in compliance with, applicable pretreatment standards specified for that substance under federal or tribal law; or
  - 4) liability has been assumed by the federal postclosure liability fund under CERCLA, 42 U.S.C. ' 9607(k).
- f) It is a defense to liability under this section that, for any injury to, destruction of, or loss of natural or cultural resources:
  - 1) the natural or cultural resources were specifically identified as an irreversible and irretrievable commitment of resources in an approved final environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license; and

- 2) the project or facility was being operated within the terms of its permit or license.
- g) It is a defense to liability under this section that the response costs or damages resulted from acts taken or omitted in preparation for, or in the course of rendering care, assistance, or advice to the Director or RLED pursuant to this section or in accordance with the national hazardous substance response plan under CERCLA, 42 U.S.C ' 9605, or at the direction of an on-scene coordinator appointed under that plan, with respect to any release or threatened release of a hazardous substance.
- h) Any person claiming a defense provided in this subdivision has the burden of proving all elements of the defense by a preponderance of the evidence.

**2000.35 Contribution**

**Subdivision 1. In General**

Any person may seek contribution in tribal court from any other person, except the Red Lake Nation, who is liable or potentially liable as a responsible party under this Act, during or following any action brought under this Act. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subdivision shall diminish the right of any person to bring an action for contribution in the absence of an action being brought under this Act.

**Subdivision 2. Settlement**

- a) A person who has resolved its liability in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the other persons by the amount of the settlement.
- b) If the Red Lake Nation has obtained less than complete relief from a person who has resolved its liability to the Red Lake Nation in an administrative or judicially approved settlement, the Red Lake Nation may bring an action against any person who has not so resolved its liability.
- c) A person who has resolved its liability to the Red Lake Nation for some or all of a response action or for some or all of the costs of such action in an



administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph a of this subdivision. In any action under this paragraph c, the rights of any person who has resolved its liability to the Red Lake Nation shall be subordinate to the rights of the Red Lake Nation.

**Subdivision 3. Timing of Action for Contribution**

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

- a) The date of judgment in any action under this Act for recovery of such costs or damages; or
- b) The effective date of an administrative settlement or date of entry of a judicially approved settlement with respect to such costs or damages.

**SUBCHAPTER 4. VOLUNTARY RESPONSE PROGRAM**

**2000.41 Survey, Inventory, and Public Record of Sites**

**Subdivision 1. Survey and Inventory**

The Director shall conduct a survey of Brownfields sites and potential Brownfields sites within the Red Lake Nation; prepare an inventory of such sites that provides an estimate of the number, likely locations, and general characteristics of Brownfields sites within the Red Lake Nation; and update such inventory at least annually. The inventory shall include sites that have already undergone screening, evaluation, or response as well as sites that have been identified as having possible releases but have not yet been screened or evaluated. The inventory is intended to serve as an informational tool and is not intended to identify priorities for action.

**Subdivision 2. Site Prioritization**

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

- a) the relative risk or danger to the public health, welfare, or the environment;
- b) the population at risk;

- c) the hazard potential of the hazardous substances or the pollutants or contaminants at such sites;
- d) the potential for contamination of drinking water supplies;
- e) the potential for direct human contact;
- f) the potential for destruction of sensitive ecosystems;
- g) the damage to natural or cultural resources;
- h) the effect on the human food chain; and
- i) the contamination or potential contamination of the ambient air.

**Subdivision 3. Public Record of Sites**

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

**2000.42 Voluntary Cleanup**

**Subdivision 1. In General; Protection from Liability**

- a) *In General.* This section establishes a Voluntary Response Program (also known as a “Brownfields Program”) to facilitate the cleanup of contaminated sites on the Red Lake Nation and to encourage the redevelopment and re-use of such sites.
- b) *Non-Responsible Party.* A person who is not otherwise a responsible party under this Act will not become liable for a release or threatened release if the person undertakes and completes response actions to remove or remedy all known releases and threatened releases at a site in accordance with a voluntary response action plan submitted to and approved by the Director under this section. Such person also will not become liable for any releases or threatened releases at the identified site that are not required to be removed or remedied, as long as the

requirements of subdivision 2 of this section are met.

- c) *Responsible Party.* A responsible party may receive liability protection under this section provided that the responsible party submits and receives approval for a voluntary response action plan that requires remedy or removal of all releases and threatened releases at the site and the responsible party receives a certificate of completion under subdivision 7 of this section. When the Director issues the certificate of completion, the Director and the responsible party may enter into an agreement that resolves the responsible party's future liability under this Act for the release or threatened release addressed by the response actions.
  
- d) *Other People Protected.* The liability protection provided by this section also applies to the following persons when the Director issues a certificate of completion under subdivision 7 of this section:
  - 1) When the response action is performed by a non-responsible party:
    - A) the owner of the site, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;
    - B) a person providing financing to the person who undertakes and completes the response actions, or who acquires or develops the site; and
    - C) a successor or assign of any person to whom the liability protection applies.
  
  - 2) When the response action is performed by a responsible party:
    - A) a person who acquires the site after approval of the voluntary response action plan;
    - B) a person providing financing for response actions or development at the site after approval of the voluntary response action plan, whether the financing is provided to the person undertaking the response actions or another person who acquires or develops the property; and
    - C) a successor or assign of any person to whom the liability protection applies.

- e) *Duty to Exercise Due Care.* Nothing in this section relieves a person of any liability for failure to exercise due care in performing a response action.
- f) *Exclusions.* The liability protection provided by this section does not apply to:
  - 1) a person who aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan;
  - 2) a person who was responsible for a release or threatened release identified in the approved voluntary response action plan before taking an action that would have made the person subject to the protection under paragraph c or d of this subdivision; or
  - 3) a person who obtains approval of a voluntary response action plan under this section by fraud or misrepresentation, or by knowingly failing to disclose material information, or who knows that approval was so obtained before taking an action that would have made the person subject to protection under paragraph c or d of this subdivision.

**Subdivision 2. Partial Response Action**

- a) The Director may approve a voluntary response action plan submitted by a person who is not a responsible party that does not require removal or remedy of all releases and threatened releases at a site if the Director determines that all of the following criteria have been met:
  - 1) if reuse or development of the site is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that meets the same standards for protection that apply to response actions taken or ordered under ' 2000.33;
  - 2) the response actions and the activities associated with any reuse or development proposed for the site will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

- 3) the owner of the site agrees to cooperate with the Director or other persons acting at the direction of the Director in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.
- b) Under paragraph a, subparagraph 3 of this subdivision, an owner may be required to agree to any or all of the following terms necessary to carry out response actions to address remaining releases or threatened releases:
- 1) to provide access to the property to the Director and the Director=s authorized representatives;
  - 2) to allow the Director, or persons acting at the direction of the Director, to undertake reasonable and necessary activities at the property, including placement of borings, wells, equipment, and structures on the property, provided that the activities do not unreasonably interfere with the proposed reuse or redevelopment; and
  - 3) to grant easements or other interests in the property to the RLED for any of the purposes provided in subparagraph 1 or 2 of this paragraph.
- c) An agreement under paragraph a, subparagraph 3 of this subdivision must apply to and be binding upon the successors and assigns of the owner. The owner shall record the agreement, or a memorandum approved by the Director that summarizes the agreement, with the Tribal Realty Office of the Red Lake Nation.

**Subdivision 3. Eligibility**

- a) *Site.* Any Brownfields site, as that term is defined in ' 2000.02, is eligible for a response action under this section.
- b) *Person.* Any person is eligible to undertake a response action under this section, according to the provisions herein.

**Subdivision 4. Submission and Approval of Voluntary Response Action Plan**

- a) *Application.* A person desiring to participate in the Voluntary Response Program must submit to the Director an application containing information

regarding the site in question, its proposed future development, an environmental assessment of the site, a description of the proposed voluntary response action plan, and an application fee, as specified in regulations promulgated under this section.

- b) *Assistance from Director.* If the Director approves the application, a voluntary response action plan must be prepared by the applicant and approved by the Director before any work under the plan may begin. The Director may, upon request, assist in or supervise the development and implementation of the voluntary response action plan. Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports.
- c) *Fees for Assistance.* A person requesting assistance under paragraph b of this subdivision shall pay the RLED for the agency's cost, as determined by the Director, of providing assistance. A tribal department or other political subdivision of the Red Lake Nation is not required to pay for the RLED's cost to review agency records and files. Money received by the RLED for assistance under this subdivision must be deposited in the account established for the Environmental Response Program under ' 2000.06, subdivision 3.
- d) *Requirements for and Approval of Voluntary Response Action Plans.* A voluntary response action plan submitted to the Director for approval must include an investigation report that describes the methods and results of an investigation of the releases and threatened releases at the identified site. The Director shall not approve the voluntary response action plan unless the Director determines that the nature and extent of the releases and threatened releases at the site have been adequately identified and evaluated in the investigation report. Response actions required in a voluntary response action plan under this section must meet the same standards for protection that apply to response actions taken or ordered under ' 2000.33, and must comply with all applicable tribal and federal requirements. Before final approval of a voluntary response action plan, the Director must comply with the public participation requirements in subdivision 9 of this section. The Director may include in the approval an acknowledgment that, upon certification of completion of the response actions as provided in subdivision 7 of this section, the person submitting the plan will receive the protection from liability provided under this section.

**Subdivision 5. Requirement for Approval of Voluntary Response Actions**

No person may undertake any investigation or response action under this section unless the Director has determined that the person meets the criteria and conditions established for participation in the Voluntary Response Program and has approved the application to participate and the proposed voluntary response action plan.

**Subdivision 6. Oversight Fees**

The Director may require a person participating in the Voluntary Response Program to pay an oversight fee to the RLED to reimburse the RLED for the costs of monitoring the cleanup. The Director shall set the amount of the oversight fee by regulation.

**Subdivision 7. Certification of Completion**

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

**Subdivision 8. Failure to Complete Response Action**

If a person receiving approval of a voluntary response action plan fails or refuses to complete the actions covered by the plan, including operation and maintenance, the Director may require such person to complete the response action pursuant to ' 2000.33 and subchapter 5, may complete the response action and recover costs pursuant to ' 2000.34, may refer the matter to the U.S. Environmental Protection Agency to pursue under CERCLA, RCRA, or other applicable federal laws, and/or may take any other action available under tribal or federal law to ensure that the response action will be completed.

**Subdivision 9. Public Participation**

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

**Subdivision 10. Other Rights and Authorities Not Affected**

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

**SUBCHAPTER 5. ENFORCEMENT**

**2000.51 General Enforcement Authority**

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

- 1) issue and serve on such person an order requiring the person to comply with each requirement or prohibition, pursuant to the provisions of this section;
- 2) issue and serve on such person an administrative penalty order in accordance with ' 2000.53;
- 3) bring a civil action in accordance with ' 2000.55, subdivision 1; and/or
- 4) bring a criminal action in accordance with ' 2000.55, subdivision 2.

**2000.52 Administrative Orders**

**Subdivision 1. In General**

The Director may issue an order to a responsible party to investigate, remove or arrange



for the removal of, and provide for remedial action relating to a hazardous substance or pollutant or contaminant or take any other response measures that the Director deems necessary to protect the public health or welfare or the environment. The Director also may order any person who is subject to any requirement under this Act to:

- a) establish and maintain records;
- b) prepare and submit reports;
- c) install, use and maintain monitoring equipment, and use audit procedures or methods;
- d) monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Director shall prescribe);
- e) submit compliance certifications; and
- f) provide such other information as the Director may reasonably require.

**Subdivision 2. Orders to Comply**

An order to comply issued under this section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to ' 2000.54, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director following the hearing. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply issued under this section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act or with a term or condition of any plan approved under this Act. Any person subject to the order may seek judicial review of a final agency determination on the order as provided in ' 2000.62.

**Subdivision 3. Emergency Compliance Orders**

Notwithstanding any other provision of this section, the Director (after consultation with the Tribal Prosecutor, where feasible) may issue a compliance order that is effective

immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request with the Director for a stay pending the outcome of a hearing on the order taken pursuant to ' 2000.54. The Director shall, by written notice, grant or deny the request for a stay within five days of receipt of the request. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the Red Lake Court of Indian Offenses but the order shall be effective unless and until the court rules otherwise. Any person subject to an emergency compliance order may seek judicial review of a final agency determination on the order as provided in ' 2000.62.

**Subdivision 4. Enforcement of Compliance Orders**

Orders of the Director shall be enforced by the Environmental Response Program, the Red Lake Fire Prevention Program, and the Red Lake Nation's police and conservation officers. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

- a) entering upon any property or establishment believed to be violating the order and demanding compliance; and
- b) terminating part or all operations at the facility subject to the order.

**Subdivision 5. Injunctive Relief**

Notwithstanding any other provision of this section, the Director may seek injunctive relief pursuant to ' 2000.55, subdivision 1 to restrain any activity which may endanger or cause damage to public health or welfare or the environment or, in the event of a release or threatened release creating an imminent and substantial threat to the public health or welfare or environment, to require a person to respond to such release or threatened release.

**2000.53 Administrative Assessment of Penalties**

**Subdivision 1. Basis for Penalty**

The Director may issue against any person an administrative order assessing a civil administrative penalty of up to \$10,000 per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation adopted pursuant to this Act, an order issued pursuant to this Act, or a plan approved pursuant to this Act. The Director's authority under this subdivision shall be limited to matters where the total penalty sought does not exceed \$100,000 and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and the

Tribal Prosecutor or Special Prosecutor, as the case may be, jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify, or remit, with or without any conditions, any administrative penalty imposed under this section.

**Subdivision 2. Hearing Requirement**

The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing under ' 2000.54. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

**Subdivision 3. Field Citations**

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

**Subdivision 4. Judicial Review**

Any person subject to a civil penalty under subdivisions 1 or 3 of this section who obtained a hearing on the penalty under ' 2000.54 may seek review of the final agency determination on the penalty in the Red Lake Court of Indian Offenses by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Tribal Prosecutor or Special Prosecutor, as the case may be. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to

recover civil penalties ordered or assessed under this section.

**Subdivision 5. Failure to Pay Penalty**

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

**Subdivision 6. Calculation of Penalty**

In determining the amount of any penalty to be assessed under this section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in ' 2000.55, subdivision 5.

**2000.54 Administrative Hearings**

**Subdivision 1. Creation of Environmental Hearing Board**

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

**Subdivision 2. Procedures**

The Director shall, by regulations promulgated pursuant to ' 2000.61, establish a formal hearing review process that meets due process standards for the Environmental Hearing Board to hear appeals taken under ' 2000.52, subdivisions 2 and 3 (administrative orders to comply) and ' 2000.53, subdivisions 1 and 3 (administrative penalty orders). Public

hearings required under this Act shall be informal hearings not subject to requirements under this section.

## **2000.55      Judicial Enforcement**

### **Subdivision 1.      Civil Judicial Enforcement**

The Director may request the Tribal Prosecutor or Special Prosecutor, as the case may be, to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in an amount per day per violation not to exceed \$25,000, in any of the following instances:

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

### **Subdivision 2.      Criminal Penalties**

Any person who intentionally:

- a) violates any provision, requirement, or prohibition of this Act, including but not limited to a regulation adopted pursuant to this Act, an order issued pursuant to this Act, or a reporting requirement under this Act;
- b) makes any false material statement, representation, or certification in, or omits material information from, or alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this Act to be filed or maintained, including required by an order issued pursuant to this Act; or
- c) falsifies, tampers with, renders inaccurate, or fails to install any monitoring

device or method required to be maintained or followed under this Act;

shall, upon conviction, be punished by a fine in an amount not to exceed \$5,000 or imprisonment for not more than one year or both, or such larger penalties as may be available under the Tribal Law and Order Act of 2010, P.L. 111-211, or be subject to any other penalty imposed by the tribal court and available under tribal law. Such offenses are hereby incorporated into the Red Lake Nation Criminal Code, and are deemed to be Crimes Against the Tribe under Title V, Chapter 504 of the Tribal Code. For the purpose of this subdivision, the term “person” includes, in addition to the entities referred to in ' 2000.02, any responsible corporate officer.

**Subdivision 3. Suits for Costs**

In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil or criminal proceeding brought under this Act, for any damages caused to the lands or other resources of the Red Lake Nation as the result of any violation of this Act, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter, and for the reasonable value of the attorney time and expenses associated with such proceedings.

**Subdivision 4. Jurisdiction and Venue**

Any action under this section shall be brought in the Red Lake Court of Indian Offenses, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Red Lake Nation under this Act, and award any other appropriate relief.

**Subdivision 5. Calculation of Penalties; Notice**

- a) For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section or ' 2000.53, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice, and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Red

Lake Court of Indian Offenses that alleges any violation described in subdivision 1 of this section.

- b) In determining the amount of a civil penalty assessed under this section, the court shall consider the history, seriousness, and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator=s full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with actions under subchapter 3 where the violator does not have sufficient cause to violate or fail or refuse to comply with such action.
- c) All penalties collected pursuant to this section shall be deposited in the account established pursuant to ' 2000.06, subdivision 3.
- d) In lieu of or in addition to a monetary penalty, the Director may impose or may request the Tribal Prosecutor or Special Prosecutor, as the case may be, to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

**Subdivision 6. Security**

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

**Subdivision 7. Enforcement of Judgments**

All judgments entered under this section and ' ' 2000.52 and 2000.53 may be enforced by execution, levy, sale, redemption, garnishment, and contempt pursuant to the Tribal Code, see Chapters 103, 201, and 204.

**2000.56 Citizen Suits**

**Subdivision 1. Authority to Bring Civil Action; Jurisdiction**

- a) Except as provided in subdivision 2 of this section, a person may commence a civil action in the Red Lake Court of Indian Offenses on his own behalf against any person (except the Red Lake Nation or any instrumentality of the Red Lake Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Act, including but not limited to a regulation adopted

pursuant to this Act or an order issued under this Act.

- b) The Red Lake Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, or order, to order such person to take such other action as may be necessary, and to apply any appropriate civil penalties.

**Subdivision 2. Notice**

An action may not be commenced under subdivision 1 of this section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Tribal Prosecutor, and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative action or a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in an action filed with the Red Lake Court of Indian Offenses.

**Subdivision 3. Intervention; Service of Complaint**

- a) The Director, if not already a party, may intervene as a matter of right in any action brought under this section.
- b) Whenever an action is brought under this section the plaintiff shall serve a copy of the complaint on the Tribal Prosecutor and on the Director. In an action brought under this section in which the Director is not a party, no consent judgment may be entered prior to 45 days following the receipt of a copy of the proposed consent judgment by the Tribal Prosecutor and the Director, during which time the Tribal Prosecutor or Special Prosecutor, as the case may be, and the Director may submit, on behalf of the Red Lake Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

**Subdivision 4. Award of Costs**

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

**Subdivision 5. Penalty Fund**

Penalties received under this section shall be deposited in the account established pursuant to ' 2000.6, subdivision 3.



## **SUBCHAPTER 6. RULEMAKING AND JUDICIAL REVIEW**

### **2000.61 Rulemaking**

**Subdivision 1.** Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Red Lake Nation that are concerned. The notice shall specify the period available for public comment; the date, time and place of any public hearing; and the location of a copy of the proposed regulation that is available to the public for review. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any person to submit written comments, data, or documentary information; give interested persons an opportunity to present orally their views, data, or arguments; and keep the docket open for 20 calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

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

### **2000.62 Review in the Red Lake Court of Appeals**

#### **Subdivision 1. Petitions for Review**

Notwithstanding Tribal Code ' 100.04, subdivision 1, any final action taken by the Director under this Act, including but not limited to promulgation of regulations and standards, issuance of orders, issuance and denial of permits, and imposition of administrative penalties, is subject to review in tribal court. Any such petition for review (except for petitions for review of administrative penalties imposed under ' 2000.53, which are subject to review under ' 2000.53, subdivision 4) shall be brought in the Red Lake Court of Appeals. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise. The Red Lake Nation consents to the judicial review provided for in this section for purposes of Title II, Chapter 209 of the Tribal Code.

**Subdivision 2.            Limitations on Review**

- a)     If judicial review of a final action of the Director could have been obtained under subdivision 1 of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.
  
- b)     With respect to any regulations promulgated under this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Red Lake Court of Appeals. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three months.
  
- c)     Except as otherwise expressly allowed by tribal law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulations that there is a substantial likelihood that the regulations would have been significantly changed if such errors had not been made.

**Subdivision 3.            Standards for Review**

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

- a)     arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
  
- b)     in excess of statutory jurisdiction, authority, or limitations or short of statutory right;
  
- c)     without observance of procedure required by law; or

d) unsupported by substantial evidence.