

Bay Mills Indian Community Hazardous Substances Control Ordinance

Section 1: Purpose

- 1.01. The beneficial stewardship of the land, air, and waters of the Reservation of the Bay Mills Indian Community is of paramount importance. Since treaty times, the Tribe has fought to preserve and protect the traditional lifeway and its reliance on the environment's natural resources for food, shelter, medicines, and for trade.
- 1.02. There exists on the Reservation certain facilities containing hazardous substances that pose a danger to public health, safety, welfare, or the environment. There is a need to provide for a method of preventing and eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the Reservation. These include a heavily trafficked road leading to releases from vehicle traffic and the Reservation's position along the St. Mary's River, increasing the risk of releases from recreational and commercial vessels.
- 1.03. The purpose of this Ordinance is to provide for the cleanup of hazardous substances sites to a level protective of the Tribe's traditional lifeway and to prevent future unauthorized releases of hazardous substances.
- 1.04. The provisions of this Ordinance shall apply to all land and waters within the exterior boundaries of the Reservation, lands outside of the exterior boundaries of the Reservation held by the Tribe or its entities in trust or in fee status, and to all other land and waters to the maximum extent permitted by law.

Section 2: Definitions

As used in this Ordinance:

- 2.01. "*All appropriate inquiry*" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312 (2014).
- 2.02. "*Background concentration*" means the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility.
- 2.03. "*Baseline environmental assessment*" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is or contains a facility. For purposes of a baseline environmental assessment, the all appropriate inquiry may be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure.

- 2.04. "*Certificate of completion*" means a written response provided by the department confirming that a response activity has been completed in accordance with the applicable requirements of this part and is approved by the department.
- 2.05. "*Compliance assistance costs*" means the actual costs incurred by the Department that are reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, consultant costs, laboratory costs, interest charges for delayed payments. Costs of direct activities are direct staff costs and other direct costs.
- a. Direct staff costs are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees.
 - b. Other direct costs are costs incurred as a direct result of department staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.
- 2.06. "*Department*" means the Bay Mills Biological Services.
- 2.07. "*Director*" means the director of the Bay Mills Biological Services.
- 2.08. "*Disposal*" means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any soil, air, or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.
- 2.10. "*Enforcement costs*" means reasonable expenses of the Department that are incurred in relation to enforcement of this Ordinance.
- 2.11. "*Environment*" or "*natural resources*" means land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota within the Bay Mills Indian Reservation.
- 2.12. "*Environmental contamination*" means the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity which is or may become injurious to the environment or to the public health, safety, or welfare.
- 2.13. "*Evaluation*" means those activities including, but not limited to, investigation, studies, sampling, analysis, development of feasibility studies, and administrative efforts that are needed to determine the nature, extent, and impact of a release or threat of release and necessary response activities.
- 2.14. "*Exacerbation*" means the occurrence of either of the following:
- a. Migration of contamination beyond the boundaries of the property that is the source of the release at levels above cleanup criteria.

- b. A change in facility conditions that increases response activity costs.
- 2.15 "*Facility*" means any area, place, parcel or parcels of property, or portion of a parcel of property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located.
- 2.16 "*Feasibility study*" means a process for developing, evaluating, and selecting appropriate response activities.
- 2.17 "*Financial assurance*" means a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof.
- 2.18 "*Hazardous substance*" means:
- a. Any substance that the department determines, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.
 - b. Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.
 - c. Hazardous waste as defined in 40 CFR § 261.3.
- 2.19 "*Interim response activity*" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.
- 2.20 "*No further action letter*" means a written response provided by the Department confirming that a no further action report has been approved after review by the department.
- 2.21 "*No further action report*" means a report detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate.
- 2.22 "*Nonresidential*" means that category of land use for parcels of property or portions of parcels of property that is not residential. This category of land use may include, but is not limited to, any of the following:
- a. Industrial, commercial, retail, office, and service uses.
 - b. Recreational properties that are not contiguous to residential property.

- c. Hotels, hospitals, and campgrounds.
 - d. Natural areas such as woodlands, brushlands, grasslands, and wetlands.
- 2.23 "*Operator*" means a person who is in control of or responsible for the operation of a facility.
- 2.24 "*Owner*" means a person who owns a facility.
- 2.25 "*Person*" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, or federal government agency, but does not include the Bay Mills Indian Community, tribal entities, or tribal citizens.
- 2.26 "*Postclosure agreement*" means an agreement between the Tribe and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions.
- 2.27 "*Postclosure plan*" means a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions.
- 2.28 "*Release*" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance.
- 2.29 "*Remedial action*" includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.
- 2.30 "*Remedial action plan*" means a work plan for performing remedial action under this part.
- 2.31 "*Response activity*" means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any response activity.
- 2.32 "*Response activity costs*" or "*costs of response activity*" means all costs incurred in taking or conducting a response activity.
- 2.33 "*Response activity plan*" means a plan for undertaking response activities. A response activity plan may include 1 or more of the following:

- a. A plan to undertake interim response activities.
 - b. A plan for evaluation activities.
 - c. A feasibility study.
 - d. A remedial action plan.
- 2.34 "*Responsible Party*" means any Person whom the Department finds, based on credible evidence, to be liable under Section 4.
- 2.35 "*Site*" means the same as "*Facility*".
- 2.36 "*Source*" means any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment.
- 2.37 "*Threatened release*" or "*threat of release*" means any circumstance that may reasonably be anticipated to cause a release.
- 2.38 "*Tribal citizen*" means anyone who is an enrolled member of the Bay Mills Indian Community.
- 2.39 "*Tribal entity*" means the Bay Mills Indian Community and any department or governmental, commercial, or industrial operation of the Bay Mills Indian Community.
- 2.40 "*Tribal member*" means the same thing as tribal citizen.

Section 3: BMIC Biological Services Powers and Duties

- 3.01. The Department may exercise the following powers in addition to any other powers granted by Tribal or federal law:
- a. Provide informal advice and assistance to persons regarding the implementation of this Code. This may include site specific advice to persons who are conducting or otherwise interested in conducting Remedial Actions.
 - 1. Any such advice or assistance shall be advisory only, and shall not be binding on the Department.
 - 2. As a part of providing this advice and assistance, the Department may make a determination whether the Remedial Action(s) performed by Responsible Parties meet the substantive requirements of this Ordinance or whether the Department believes further Remedial Action is necessary at the Facility.
 - b. Report all spills or releases into waters adjacent to the Reservation to the National Response Center at **1-800-424-8802**.

- c. Investigate or assist Responsible Parties in investigating, any Releases or Threatened Releases of Hazardous Substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any Release or Threatened Release.
 - 1. If there is a reasonable basis to believe that a Release or Threatened Release of a Hazardous Substance may exist, the Department's authorized employees, agents, or contractors may enter upon any property and conduct investigations.
 - 2. The Department shall give at least 7 days' notice before entering property unless emergency conditions apply.
 - d. Conduct or assist Responsible Parties in conducting remedial actions (including investigations under section 3.01.2) to address Releases or Threatened Releases of Hazardous Substances.
 - 1. In carrying out such powers, the Department's authorized employees, agents, or contractors may enter upon property.
 - 2. The Department shall give reasonable notice before entering property unless an emergency prevents such notice.
 - 3. In conducting or assisting Responsible Parties in conducting remedial action, the Department shall give preference to permanent solutions to the maximum extent practicable, and shall provide for, or require adequate monitoring to ensure the effectiveness of the remedial action.
 - e. Such additional powers as may be authorized by the Tribe in the future.
- 3.02. Take any other actions necessary to carry out the provisions of this Ordinance, including proposing that the Council amend this Ordinance.
- 3.03. The Department shall prepare invoices documenting the costs incurred by the Department in implementing this Ordinance; however, the Department shall, where appropriate, waive collection of costs in order to provide an appropriate level of support to Tribal citizens and Tribal Departments. Invoices prepared by the Department shall be submitted to the Tribe for issuance and collection.

Section 4: Standard of Liability

- 4.01. Any Person is liable under this Ordinance:
- a. If they caused the Release or Threatened Release of a Hazardous Substance; or
 - b. If they became an Owner or Operator of a Facility after **February 9, 2026** unless they conducted a Baseline Environmental Assessment (BEA).

- 4.02. Any Person who causes a Release must report such Release to the Department within 24 hours. Any Person who discovers a Release must report such discovery within 24 hours, regardless of when the Release occurred.
- 4.03. Nothing in this Ordinance shall be interpreted or applied in a manner that imposes any liability on the Tribe or tribal members.

Section 5: Compliance Assistance

- 5.01. The Department will provide assistance to Responsible Parties to understand and comply with the requirements of this Ordinance. This assistance may include, but is not limited to, review of the following for consistency with this Ordinance:
 - a. Remedial investigation plans;
 - b. Remedial investigation reports;
 - c. Proposed remedial actions; and
 - d. Site cleanup plans.
- 5.02. Compliance Assistance Costs shall be paid for by the Responsible Party. The Responsible Party shall be billed for the Department's time, on a monthly basis. Full payment is due within 30 days of the invoice date. Nonpayment will result in the Department withholding the requested opinion(s) sought by the Responsible Party.
- 5.03. Whether or not a Responsible Party has sought compliance assistance from the Department, a Responsible party can seek an opinion from the Department on the likely outcome of any Remedial Activity. The Department can advise the Responsible Party as to whether further action, following the completion of any Remedial Activity, is likely to be necessary to comply with this Ordinance.
- 5.04. A Responsible Party who has successfully completed Remedial Activity at a Site, with or without prior Compliance Assistance from the Department, may request a Certificate of Completion.
- 5.05. Documentation of the Remedial Activity completed at the Site must be provided to the Department. At a minimum, the following information must be provided:
 - a. The identity and location of the hazardous substance.
 - b. The circumstances of the hazardous substance release and its discovery.
 - c. The results of all site investigations and feasibility studies.
 - d. Interim actions and cleanup actions completed.
 - e. Compliance monitoring planned or under way.

- f. Restrictions on site use following Remedial Activity.
- 5.06. Previously reported information may be summarized and referenced to avoid unnecessary duplication.
- 5.07. The Department may request additional information.
- 5.08. The costs of the Department's review and its preparation of a Completion Report shall be billed to the Responsible Party as Compliance Assistance Costs consistent with section 5.03 of this Ordinance.

Section 6: Remedial Actions

- 6.01. All of the following shall be considered when a person is selecting a remedial action or the Department is selecting or approving a remedial action:
 - a. The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.
 - b. The long-term uncertainties associated with the proposed remedial action.
 - c. The persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances.
 - d. The short- and long-term potential for adverse health effects from human exposure.
 - e. Costs of remedial action, including long-term maintenance costs. However, the cost of a remedial action shall be a factor only in choosing among alternatives that adequately protect the public health, safety, and welfare and the environment.
 - f. Reliability of the alternatives.
 - g. The potential for future response activity costs if an alternative fails.
 - h. The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redispersion or containment.
 - i. The ability to monitor remedial performance.
- 6.02. Evaluation of the factors in subsection 6.01 shall consider all factors in balance with one another as necessary to achieve the objectives of this part. No single factor in subsection 6.01 shall be considered the most important.

Section 7: Cleanup Standards

- 7.01. Surface water, groundwater, soil and sediment cleanup standards: The cleanup standards enforced by the Department shall be those set forth in the State of Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA),

Appendix 1 to this Ordinance or, where the Tribe has adopted more stringent standards, those set forth in Appendix 2 to this Ordinance.

- 7.02. Cleanup standards include unrestricted residential, unrestricted site-specific, restricted residential, restricted non-residential, and restricted site-specific cleanup.
- a. The unrestricted residential cleanup standards are the most restrictive remediation criteria for property, because it is assumed that there is the greatest opportunity for exposure to contamination in residential settings, especially for children. When a facility is cleaned up to residential standards, the property is considered safe for all uses. A clean up based on nonresidential standards requires proof that the current and future land use and zoning at the property does not allow residential uses.
 - b. Restricted (limited) categories exist for circumstances that require restrictions on the use of property, such as not allowing residential or institutional uses, or on the natural resources, such as exposure barriers (i.e., paving) or prohibitions on resource use (i.e., no consumption of groundwater) to prevent exposure to contamination now and in the future. A clean up based on any of the restricted categories requires certain restrictions to be placed on the property deed to ensure that the use restrictions and exposure barriers remain in place. Deed restrictions require the consent of the Tribe, the approval of the Bureau of Indian Affairs, and recording.
- 7.03. The Department may impose more stringent cleanup standards where restrictions are required to protect Tribal Cultural Practices.
- 7.04. Application of standards:
- a. Application of unrestricted residential, unrestricted site-specific, restricted residential, restricted non-residential, and restricted site-specific cleanup standards shall be at the sole discretion of the Department.
 - b. Application of restricted standards for the protection of Tribal Cultural Practices in lieu of, or in addition to, other cleanup standards shall be at the sole discretion of the Department.

Section 8: Sovereign Immunity Preserved

Nothing in this Ordinance shall be construed as a waiver of the Tribe's sovereign immunity from suit, which is expressly preserved.

Section 9: Enforcement Powers [RESERVED]

Section 10: Judicial Review [RESERVED]

Section 11: Private Right of Action [RESERVED]

APPENDIX 1

State of Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

APPENDIX 2

[RESERVED]

Ordinance originally adopted by Bay Mills Indian Community Executive Council on February 9, 2026.