The Bad River Band Environmental Response and Remediation Code

ERRC-380

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The Bad River Band Environmental Response and Remediation Code

380.1 Short Title

This Chapter shall be known as the Bad River Environmental Response and Remediation Code.

380.2 Purpose and Policy

(1) The purpose of this law is to:

(a) Regulate the identification, investigation and remediation of discharges of hazardous substances to the environment;

(b) Identify sites where the discharge of a hazardous substance into the environment has occurred;

(c) Eliminate contamination from and control the threat of, or actual discharge of hazardous substances; and

(d) To impose on, and recover from, the responsible party(ies) all costs of removal or remedial action incurred by the Tribe; and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

(2) It is the policy of the Tribe to:

(a) Respond to discharges of hazardous substances and environmental contamination concerns;

(b) Ensure as the first priority that the contaminated lands are restored to pre-release conditions, using Tribal cleanup standards that are the most protective of human health, natural resources, and tribal subsistence uses;

(c) Ensure that remediation is financed and conducted in the first instance by the responsible party(ies); and

(d) If the department determines that remediation and restoration to pre-release conditions is not technologically possible, ensure that the Tribe recovers damages for the destruction or loss of natural resources from the responsible party(ies).

380.3 Adoption and Amendment

(1) This law is adopted by the Bad River Tribal Council by resolution **4-1-15-399** and is effective **April 1, 2015**.

(2) This law may be amended pursuant to the procedures set out in Tribal law by the Bad River Tribal Council.

380.4 Conflicts, Severability

(1) In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, policy, regulation, rule, resolution, or motion.

(2) Should a provision of this law or the application thereof to any person or circumstances be held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

380.5 Jurisdiction

This law applies to all activities within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the Treaty with the Chippewa, 1854, 10 Stats., 1109 (Sept. 30, 1854) and any lands added thereto pursuant to federal law; all lands held in trust for the Tribe within the State of Wisconsin; all lands and resources over which the Tribe can demonstrate authority under federal Indian law; and all releases or threatened releases of hazardous substances on or to the foregoing, regardless of where the acts or omissions giving rise to the release or threatened release occurred.

380.6 Definitions

This section shall govern the definitions of words and phrases used within this Chapter. All words not defined herein shall be used in their ordinary and everyday sense.

(1) "All Appropriate Inquiries" means the process of evaluating a property's environmental conditions and assessing the likelihood of any contamination in compliance with the All Appropriate Inquiries Final Rule at 40 CFR 312.

(2) "Brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a Hazardous Substance, pollutant, or contaminant.

(3) "Cleanup standards" means (a) the level of hazardous substance concentrations that protect human health, reservation natural resources, and tribal subsistence uses ("cleanup levels"); (b) the location on the site where those cleanup levels must be attained ("points of compliance"); and (c) additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable Tribal and federal laws and are generally established in conjunction with the selection of a specific cleanup action. Cleanup levels that have been adopted by the Tribe as a matter of Tribal law for Surface Water, Groundwater, Sediment, and Soil are at Appendices A-1 through A-4, as amended.

(4) "Contamination" or "contaminated" means the environment has been affected by a hazardous substance to the point that remedial action is necessary to restore the environment.

(5) "Department" means the Natural Resources Department of the Bad River Band of Lake Superior Tribe of Chippewa Indians.

(6) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, releasing or dumping.

(7) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water in a manner which may permit the waste to be emitted into the air, to be discharged into any waters of or otherwise to enter the environment.

(8) "Emergency" means a situation which requires an immediate response to address an imminent threat to public health, safety or welfare, or the environment.

(9) "Environmental standards" mean those cleanup standards, performance standards, standards of control and other substantive and procedural requirements, criteria or limitations promulgated under Tribal, federal or state environmental or facility sitting laws that specifically address a hazardous substance, pollutant, remedial action, location or other circumstances found at a site or facility.

(10) "Facility" means:

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

(b) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(11) "Free product" means a hazardous substance that is present in the environment as a floating or sinking non-aqueous phase liquid.

(12) "Groundwater" means subsurface water in a zone of saturation.

(13) "Hazardous sites list" means a list of sites where remedial action has been determined by the department to be necessary.

(14) "Hazardous substance" means any substance or combination of substances, including any waste of a solid, semi-solid, liquid or gaseous form, which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating reversible illness, or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to:

(a) A substance defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 as amended, as a hazardous substance.

(b) Those substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives.

(c) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure.

(d) Waste generated during the extraction, beneficiation, and processing of minerals, identified in Appendix A-1.

(15) "Immediate Action" means a remedial action that is taken within a short period of time after the discharge of a hazardous substance or contamination occurs, or after the discovery of the discharge or contamination.

(16) “Institutional controls” mean non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedial action.

(17) “Natural resources” land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Tribe, or, if such resources are subject to a trust restriction on alienation, any member of the Tribe.

(18) “Operator” means any person who operates a site or a facility.

(19) “Owner” means any person who owns or who receives direct or indirect consideration from the operation of a site or a facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time contamination occurs.

(20) “Person” means any natural or legal person, including corporations, and Tribal, federal, and state entities, governmental units, or agencies thereof.

(21) “Practicable” means remedial action is capable of being implemented, taking into account:

(a) The technical feasibility of the remedial action option, considering its long-term effectiveness, short-term effectiveness, implementability and the time it will take until restoration is achieved; and

(b) The economic feasibility of the remedial action, considering the cost of the remedial action compared to its technical feasibility.

(22) “Registered pesticide” means a pesticide registered or exempted by the federal Environmental Protection Agency’s Office of Pesticide Programs.

(23) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, advecting, dispersing, diffusing, 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).

(24) “Remedial action” or “remedy” means those response actions, other than immediate or interim actions, taken to control, minimize, restore, or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substances or environmental pollution do not present an actual or potential threat to public health, safety, or welfare or the environment. The term includes actions designed to prevent, minimize, stabilize, or eliminate the threat of discharged hazardous substances, and actions to restore the environment to the extent practicable and meet all applicable environmental standards. Examples include storage, disposal, containment, treatment, recycling, or reuse, and any monitoring required to assure that such actions protect public health, safety, and welfare and the environment.

(25) “Reservation” means all areas within the exterior boundaries of the Bad River Indian Reservation.

(26) “Responsible party” or “liable party” means any person who, under this law, is required to:

(a) Take action to prevent or abate contamination, a threat of contamination, the discharge of a hazardous substance or threat of a discharge; or

(b) Reimburse a Tribal entity for the costs incurred by the entity to take action to prevent or abate contamination or threat of contamination or the discharge of a hazardous substance or threat of a discharge.

(27) "Restore" or "restoration" means to return the environment to the biological, chemical, and physical conditions that existed prior to the discharge of a hazardous substance or contamination.

(28) "Site" means any area where contamination has occurred or is suspected of occurring, including a place of business that handles, transports or stores hazardous substances and is required to track such materials, and anywhere that a hazardous substance has come to be located.

(29) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Bad River Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(30) "Tribal entity" means a board, committee, commission, department, division, or agency of the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

380.7 Powers and Duties of the Department

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Take, or require potentially responsible parties to take immediate action where the department has determined such action is required to protect human health or the environment;

(b) Investigate, provide for investigating, or require potentially responsible parties to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may, by subpoena issued pursuant to Chapters 115 and 114.3 of the Bad River Tribal Court Code, require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary to aid in the investigation of any releases or threatened releases of hazardous substances;

(c) Conduct, provide for conducting, or require potentially responsible parties to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent

practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(d) In addition to those powers described in §380.7(1)(a), (b), and (c), carry out all Tribal programs authorized under the federal cleanup law, the Resource Conservation and Recovery Act 42 U. S.C. § 6901 et seq., as amended, and other federal laws;

(e) Classify substances as hazardous substances for purposes of §380.6(13) of this Chapter;

(f) Issue administrative orders or enter into consent decrees or agreed orders, or issue written opinions under (h) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with tribal entities having experience in the subject matter of the order;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in §380.8 of this Chapter, and impose penalties for violations of that section consistent with §380.9(5) of this Chapter;

(h) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance. The Tribe, the department, and officers and employees of the Tribe are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance.

(2) The department shall maintain the hazardous sites list.

(a) The department shall give a hazard ranking to sites placed on the list. The purpose of hazard ranking is to estimate, based on the information compiled during the site assessment, the relative potential risk posed by the site to human health and the environment. This assessment considers air, groundwater, and surface water migration pathways, human and nonhuman exposure targets, the presence of threatened or endangered species or habitat, the presence of subsistence crops or resources, tribal uses of the site or surrounding area, historical cultural practices of the site or surrounding area, properties of the substances present, and the interaction of these variables.

(b) The department may, at its discretion, re-rank a site if, before the initiation of action at the site, the department receives additional information within the scope of the evaluation criteria which indicates that a significant change in rank may result.

(c) Site status. The hazardous sites list shall reflect the current status of remedial action at each site. The department may change a site's status to reflect current conditions. The status for each site shall be identified as one of the following:

(i) Sites awaiting further remedial action;

(ii) Sites with remedial action in progress;

(iii) Sites where a cleanup action has been conducted but conformational monitoring is underway; or

(iv) Other categories established by the department.

(d) The department may remove a site from the list only after it has determined that

(i) all remedial actions except confirmational monitoring have been completed and compliance with the cleanup standards has been achieved at the site;

(ii) the listing was erroneous.

(e) A site owner, operator, or potentially responsible person may request that a site be removed from the list by submitting a petition to the department. The petition shall include thorough documentation of all investigations performed, all cleanup actions taken, and adequate compliance monitoring to demonstrate to the department's satisfaction that one of the conditions in (d) of this subsection has been met. The department may require payment of costs incurred, including an advance deposit, for review and verification of the work performed. The department shall review such petitions; however, the timing of the review shall be at its discretion and as resources may allow.

(f) Record of sites. The department shall maintain a record of sites that have been removed from the list under subsection (d) of this section.

(g) Relisting of sites. The department may relist a site that has previously been removed if it determines that the site requires further remedial action.

380.8 Releases of Hazardous Substances – Notice

(1) Report of Release: Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment shall report such information to the department immediately.

(a) To the extent known, the report shall include:

(i) The identification and location of the hazardous substance;

(ii) The volume or extent of the release;

(iii) Circumstances of the release and the discovery; and

(iv) Any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.

(b) The following, which is not an exhaustive list, are examples of situations that generally should be reported under this section:

(i) Contamination in a water supply well.

(ii) Contaminated seeps, sediment or surface water.

(iii) Vapors in a building, utility vault or other structure that appear to be entering the structure from nearby contaminated soil or groundwater.

(iv) Free product such as petroleum product or other organic liquids on the surface of the ground or in the groundwater.

(v) Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law.

(vi) Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances.

(vii) Sites where unpermitted industrial waste disposal has occurred.

(viii) Sites where hazardous substances have leaked or been dumped on the ground.

(ix) Leaking underground petroleum storage tanks.

(c) Exemptions. The following releases are exempt from these notification requirements:

(i) Application of pesticides and fertilizers for their intended purposes and according to label instructions, if the use of those pesticides and fertilizers are otherwise permitted on the Reservation under Tribal law;

(ii) Lawful and non-negligent use of hazardous substances by a natural person for personal or domestic purposes;

(iii) A release in accordance with a permit that authorizes the release;

(iv) A release previously reported to the department in fulfillment of a reporting requirement in this chapter or in another law or regulation;

(v) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 U.S.C. Sec. 9603(c)), if notice of such report is provided to the department; or

(vi) An approved release to a permitted wastewater facility.

An exemption from the notification requirements in this section does not imply a release from liability under this chapter.

(2) Department response. Within ninety days of receiving information under this section, the department shall conduct an initial investigation in accordance with this chapter. For sites where a responsible party has taken immediate action or conducted an independent cleanup action, the department shall review reports that document independent cleanup actions. The review of such reports shall include an evaluation of whether the site qualifies for removal from the hazardous sites list or whether further remedial action is required.

(3) Other obligations. Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.

380.9 Enforcement and Penalties

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially responsible persons to provide the remedial action. Any responsible person, or prospective purchaser who has entered into an agreed order under § 380.7(1)(f) of this chapter, who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the Tribe for:

(a) Up to three times the amount of any costs incurred by the department as a result of the party's refusal to comply, including attorney's fees; and

(b) A civil penalty of up to $25,000 for each day the party refuses to comply.

(2) Any person who is not a responsible person under § 380.12(1) who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit in tribal court and recover such costs by proving that he or she was not a responsible person under this chapter and that the costs incurred were reasonable.

(3) The Tribe shall seek, by filing an action if necessary in a court of competent jurisdiction, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders.

(4) The Tribe may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5) Any person who fails to provide notification of releases consistent with this chapter or who submits false information is liable in an action brought by the Tribe for a civil penalty of up to $5,000 per day for each day the party refuses to comply.

(6) Any penalties recovered under this section, in excess of unreimbursed costs incurred by the department, shall be deposited to the cleanup fund.

380.10 Consent Decrees

The Bad River Tribal Court shall have jurisdiction over the entry and enforcement of Consent Decrees pursuant to Bad River Tribal Court Code Chapter 106.1(a)(5).

(1) Procedures for consent decrees initiated by the department. When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may

initiate the procedures set forth in this subsection by sending a letter to the potentially responsible person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(a) The letter shall:

(i) Inform potentially responsible person(s) that the department wants to begin negotiations which may lead to a consent decree providing for remedial action;

(ii) Propose a draft consent decree and scope of work;

(iii) Define the negotiation process and schedule which shall not exceed ninety days;

(iv) Reference the department's finding under §380.7(1)(h) of this Chapter regarding whether the remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility;

(v) Request a written statement of the potentially responsible person's willingness to proceed with the negotiation process defined in the letter; and

(vi) Request the names of other persons whom the person has reason to believe may be potentially responsible persons at the facility.

(b) The letter may request the potentially responsible person to respond, in writing, to the proposed draft consent decree and scope of work before beginning the negotiation phase.

(c) Negotiations. The department, with the assistance of the office of the Tribal Attorney, shall negotiate with potentially responsible persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially responsible person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.

(d) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under §380.9 of this Chapter, but the duration of the stay shall not exceed ninety days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(e) Deadline extensions. The department may, at its discretion, extend the deadline for negotiations established in (c) of this subsection, provided the extension does not exceed thirty days.

(2) Procedures for consent decrees initiated by potentially responsible persons. To request a consent decree a person shall submit a letter to the department via certified mail, return receipt requested, or by personal delivery.

(a) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially responsible person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions; and

(viii) Names of other persons who the person has reason to believe may be potentially responsible persons at the facility.

(b) The letter may include the contents of detailed proposal under (f) of this subsection.

(c) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, if not already done by the department, so that the department can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(e) Response. The department shall respond to the request within sixty days, unless the department needs additional time. The department may:

(i) Request additional information;

(ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or

(iii) Provide written reasons for denying the request.

(f) Contents of detailed proposal. The proposal shall contain:

(i) A proposed technical scope of work describing the remedial action to be conducted;

(ii) The data, studies, or any other information upon which the settlement proposal is based;

(iii) A statement describing the potentially responsible person's ability to conduct or finance the remedial action as described in the proposed scope of work;

(iv) A schedule for proposed negotiations and implementation of the proposed remedial actions; and

(v) Any additional information requested by the department.

(g) The department shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially responsible person within sixty days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

(h) Time limits for negotiations. The department shall set the time period and starting date for negotiations. The department, with the assistance of the Tribal Attorney, shall then negotiate with those potentially responsible persons who have received a notice under (g) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action.

(i) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under §380.9 of this Chapter, but the duration of such stay shall not exceed one hundred twenty days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances.

The department may begin an enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(3) Filing a decree. The department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. The department shall forward the proposed consent decree to the office of the Tribal Attorney. If agreed to by the Tribal Attorney, the consent decree will be filed by that office with the tribal court.

380.11 Agreed Orders

(1) Purpose. Agreed orders may be used for all remedial actions. An agreed order means that the potentially responsible person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the department will not take additional enforcement action against the potentially responsible person to require those remedial actions specified in the agreed order so long as the potentially responsible person complies with the provisions of the order. Since an agreed order is not a settlement, an agreed order shall not provide a covenant not to sue, or protection from claims for contribution. The department may require additional remedial actions should it deem such actions necessary.

(2) Procedures for agreed orders initiated by a potentially responsible person.

(a) To request an agreed order, a person shall submit a letter to the department based on available information, describing:

(i) The proposed remedial action including a schedule for the work;

(ii) The facility, including location and boundaries;

(iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;

(iv) A summary of the relevant historical use or conditions at the facility; and

(v) Names of other persons whom the person has reason to believe may be potentially responsible persons at the facility.

(b) Recognizing that the basic steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(c) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(3) Department response to potentially responsible party-initiated request. The department shall respond to the request within sixty days, unless the department needs additional time. The department may:

(a) Request additional information;

(b) Proceed with discussions, if the department believes it is in the public interest to do so; or

(c) Provide written reasons for denying the request.

(4) Procedures for agreed orders initiated by the department. When the department believes that an agreed order is an appropriate method to achieve remedial action at a facility, it may initiate the request for an agreed order.

(5) Duration of discussions. Discussions on the agreed order shall not exceed sixty days unless the department decides continued discussions are in the public interest.

(6) Enforcement. Unless an emergency exists, the department will stay any enforcement action under §380.9 of this Chapter; however, the duration of such stay shall not exceed sixty days from the date discussions begin. Furthermore, the department can withdraw from discussions if it determines that:

(a) Reasonable progress is not being made toward an agreed order acceptable to the department; or

(b) The agreed order is inappropriate based on new information or changed circumstances.

The department may begin an enforcement action after notifying the potentially responsible person in writing of its intent to withdraw from discussions.

(7) Focus of discussions. The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in developing agreed orders.

380.12 Standard of Liability

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with applicable law;

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility; and

(f) Any person whose off-Reservation conduct causes a release or a threatened release of hazardous substances on the Reservation.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The Tribal Attorney, at the request of the department, is empowered to recover all costs and damages from persons liable therefor. All costs and damages in excess of unreimbursed costs incurred by the department shall be deposited to the cleanup fund.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of nature;

(ii) An act of war; or

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

1. An employee or agent of the person asserting the defense, or

2. Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice, in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property, if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully, and without negligence, for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor; or

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations; or

(e) The Tribe or a Tribal entity.

380.13 Natural Resource Damages

In the case of an injury to, destruction of, or loss of natural resources that cannot be restored to pre-release conditions, the responsible party shall be liable to the Tribe for natural resources belonging to, managed by, controlled by, or appertaining to the Tribe, or held in trust for the benefit of the Tribe, or belonging to a member of the Tribe if such resources are subject to a trust restriction on alienation. The department shall act on behalf of the Tribe as trustee of such natural resources to recover for such damages. Sums recovered by the department as trustee, which shall include attorney's fees and litigation costs and the costs of assessment, shall be used to restore, replace, or acquire the equivalent of such natural resources.

380.14 Settlement

(1) There may be no settlement by the department with any person liable under this chapter except in accordance with this section.

(a) The Tribal Attorney may agree to a settlement with any potentially responsible person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under this chapter and with any remedial orders issued by the department. Whenever practicable and in the public interest, the Tribal Attorney may expedite such a settlement with persons whose contribution is determined by the department to be insignificant in amount and toxicity.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

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

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

(e) If the department has entered into a consent decree with an owner or operator under this section, the Tribe shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the tribe could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the Tribe has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship.

(f) Any person who is not subject to enforcement by the department under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(2) In addition to the settlement authority provided under subsection (1) of this section, the Tribal Attorney may agree to a settlement with a prospective purchaser, provided that:

(a) The settlement will yield substantial new resources to facilitate cleanup;

(b) The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

(c) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the facility, or increase health risks to persons at or in the vicinity of the facility.

(3) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under Tribal law or common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under Tribal law, common law or other statutes.

380.15 Cleanup Fund

(1) The Department shall establish a Contaminated Site Cleanup Fund (“cleanup fund”).

(2) The Fund shall be used to:

(a) Take or provide funds for immediate action where the department has determined such action is required to protect human health or the environment and a potentially responsible party is unable or cannot be compelled to take such action;

(b) Investigate or provide funds for the investigation of 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 a potentially responsible party is unable or cannot be compelled to take such action;

(c) Conduct or provide funds for conducting remedial actions (including investigations under (b) of this subsection) to remedy releases or threatened releases of hazardous substances;

(d) Provide funds necessary to prosecute an action to recover the department's costs of immediate action, investigation of releases or threatened releases, remedial action, and/or costs or penalties available under § 380.9 for noncompliance with this ordinance; and

(e) Reimburse a person who is not a responsible party under § 380.12(1) any reasonable costs he or she has incurred either:

i. complying with an order issued by the department under § 380.9(1); or,

ii. performing an immediate action and/or remedial action where the department has determined such action was required to protect human health or the environment

(3) The Fund shall be financed through deposits made pursuant to § 380.9(6) and § 380.12(2) of this Chapter, and through deposits of such fees or taxes on the manufacture, sale, or transport of hazardous substances on or through the Reservation as may be required under tribal law.

380.16 Remedial Actions

(1) The department shall select appropriate remedial actions determined to be necessary to be carried out under section § 380.7(1) of this chapter.

(2) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment.

(3) The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available.

(4) In assessing alternative remedial actions, the department shall, at a minimum, take into account:

(a) the persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances and their constituents;

(b) short- and long-term potential for adverse health effects from human exposure;

(c) short- and long-term potential for adverse effects to the environment; and

(d) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

(5) Remedial actions under this chapter shall attain a degree of cleanup and of control of further release which assures, at a minimum, protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

380.17 No Further Action/Certificate of Completion

(1) If the department concludes that a responsible party has completed all necessary remedial actions, and cleanup standards for the site have been achieved, the department may make a determination that no further action is required and update the hazardous sites list pursuant to § 380.7(2)(c).

(2) A responsible party conducting the remediation may request a Certificate of Completion from the department. Upon receiving such a request, the department may (a) grant the Certificate, (b) deny the request, or (c) notify the submitter that there is insufficient information on which the department can make a decision, and specify what information is missing and is necessary for a decision. In the event of a denial, the department shall specify the reasons for the denial.

(3) There shall be no appeal of the department's determination under this section.

380.18 Appeals

The department's investigative and remedial decisions under § 380.7, § 380.9, and § 380.16 of this chapter, and its decisions regarding liable persons under § 380.12 of this chapter shall be appealable exclusively to Tribal court and only at the following times:

(1) In a suit by the department to enforce an order or an agreed order, or seek a civil penalty under § 380.9(1);

(2) In a suit for reimbursement under § 380.9(2);

(3) In a cost recovery suit under § 380.9(3); and,

(4) In a suit by the department to compel investigative or remedial action.

The Tribe grants a limited waiver of the sovereign immunity of the department for the sole purpose of permitting a liable person to appeal the department's decisions to Tribal court as provided pursuant to this section. The court shall uphold the department's actions unless they were arbitrary and capricious. The amount of reasonable costs which may be reimbursable by the department under § 380.9(2) is limited to those funds available in the Cleanup Fund at the time of suit under this section. Nothing in this section shall be deemed a waiver of the Tribe's sovereign immunity, nor consent to suit other than as provided in §380.18, nor consent to the entry or enforcement of a money judgment against the Tribe's general funds.

APPENDICES

A-1 Mining Wastes

A-2 Surface Water Cleanup Levels

A-3 Groundwater Cleanup Levels

A-4 Sediment Cleanup Levels

A-5 Soil Cleanup Levels

A-1: Mining Waste

"Mining waste" means waste generated during the extraction, beneficiation, and processing of minerals, including but not limited to slag from primary copper processing, slag from primary lead processing, red and brown muds from bauxite refining, phosphogypsum from phosphoric acid production, slag from elemental phosphorous production, gasifier ash from coal gasification, process wastewater from coal gasification, calcium sulfate wastewater treatment plant sludge from primary copper processing, slag tailings from primary copper processing, flurogypsum from hydrofluoric acid production, process wastewater from hydrofluoric acid production, air pollution control dust/sludge from iron blast furnaces, iron blast furnace slag, treated residue from roasting/leaching of chrome ore, process wastewater from primary magnesium processing by the anhydrous process, process wastewater from phosphoric acid production, basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production, basic oxygen furnace and open hearth furnace slag from carbon steel production, chloride process waste solids from titanium tetrachloride production, slag from primary zinc processing, and friable, finely and powdered wastes containing more than one percent (1.0%) asbestos.

A-2: Surface Water Cleanup Levels

The minimum cleanup levels for surface water shall be the narrative and numeric criteria of the Bad River Band of the Lake Superior Tribe of Chippewa Indians Water Quality Standards. These cleanup levels shall remain in effect until the Department amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

A-3: Groundwater Cleanup Levels

The following chart indicates the minimum cleanup levels for ground water, in terms of amount of individual hazardous substance per unit volume, for the hazardous substances listed. These cleanup levels shall remain in effect until the Department amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment. For substances not listed below, refer to the Wisconsin Public Health Groundwater Quality Standards Table I Preventive Action Limits.

Substance	**CAS Number**	**Cleanup Levels (in µg/L) unless otherwise noted**
Acetochlor	34256-82-1	7
Acetochlor ethane sulfonic acid + oxanilic acid (Acetochlor − ESA + OXA)	187022-11-3 (ESA) 184992-44-4 (OXA)	230
Acetone	67-64-1	9 mg/l
Alachlor	15972-60-8	2
Alachlor ethane sulfonic acid (Alachlor − ESA)	142363-53-9	20
Aldicarb	116-06-3	10
Aluminum	7429-90-5	200
Ammonia (as N)	7664-41-7	9.7 mg/l
Antimony	7440-36-0	6
Anthracene	120-12-7	3000
Arsenic	7440-38-2	5
Asbestos	1332-21-4	7 million fibers per liter (MFL)
Atrazine, total chlorinated residues	1912-24-9	3*
Bacteria, Total Coliform		0**
Barium	7440-39-3	2 milligrams/liter (mg/l)
Bentazon	25057-89-0	300
Benzene	71-43-2	5
Benzo(b)fluoranthene	205-99-2	0.2
Benzo(a)pyrene	50-32-8	0.2
Beryllium	7440-41-7	4
Boron	7440-42-8	1000
Bromodichloromethane	75-27-4	0.6
Bromoform	75-25-2	4.4
Bromomethane	74-83-9	10
Butylate	2008-41-5	400
Cadmium	7440-43-9	5
Carbaryl	63-25-2	40
Carbofuran	1563-66-2	40
Carbon disulfide	75-15-0	1000
Carbon tetrachloride	56-23-5	5
Chloramben	133-90-4	150
Chlordane	57-74-9	2
Chlorodifluoromethane	75-45-6	7 mg/l 0.7 mg/l
Chloroethane	75-00-3	400

Substance	CAS Number	Cleanup Levels (in µg/L) unless otherwise noted
Chloroform	67-66-3	6
Chlorpyrifos	2921-88-2	2
Chloromethane	74-87-3	30
Chromium (total)	7440-47-3	50
Chrysene	218-01-9	0.2
Cobalt	7440-48-4	40
Copper	7440-50-8	1300
Cyanazine	21725-46-2	1
Cyanide, free[1]	57-12-5	200
Dacthal	1861-32-1	70
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	0.1
1, 2−Dibromoethane (EDB)	106-93-4	0.05
Dibromochloromethane	124-48-1	60
1, 2−Dibromo−3−chloropropane (DBCP)	96-12-8	0.2
Dibutyl phthalate	84-74-2	1000
Dicamba	1918-00-9	300
1,2−Dichlorobenzene	95-50-1	600
1,3−Dichlorobenzene	541-73-1	600
1,4−Dichlorobenzene	106-46-7	75
Dichlorodifluoromethane	75-71-8	1000
1,1−Dichloroethane	75-34-3	850
1,2−Dichloroethane	107-06-2	5
1,1−Dichloroethylene	75-35-4	7
1,2−Dichloroethylene (cis)	540-59-0	70
1,2−Dichloroethylene (trans)	540-59-0	100
2,4−Dichlorophenoxyacetic Acid (2,4−D)	94-75-7	70
1,2−Dichloropropane	78-87-5	5
1,3−Dichloropropene (cis/trans)	542-75-6	0.4
Di (2−ethylhexyl) phthalate	117-81-7	6
Dimethenamid/Dimethenamid−P	87674-68-8	50
Dimethoate	60-51-5	2
2,4−Dinitrotoluene	121-14-2	0.05
2,6−Dinitrotoluene	606-20-2	0.05
Dinitrotoluene, Total Residues[2]	25321-14-6	0.05
Dinoseb	88-85-7	7
1,4−Dioxane	123-91-1	3
Dioxin (2, 3, 7, 8-TCDD)	1746-01-6	0.00003
Endrin	72-20-8	2
EPTC	759-94-4	250
Ethylbenzene	107-06-2	5
Ethyl ether	60-29-7	1000
Ethylene glycol	107-21-1	14 mg/l
Fluoranthene	206-44-0	400
Ethylene dibromide	106-93-4	0.01
Fluorene	86-73-7	400
Fluoride	16984-48-8	4 mg/l

Substance	CAS Number	Cleanup Levels (in µg/L) unless otherwise noted
Fluorotrichloromethane	75-69-4	490
Formaldehyde	50-00-0	1000
Gross Alpha Particle Activity		15.0 pCi/l
Gross Beta Particle Activity		4.0 mrem/yr
Heptachlor	76-44-8	0.4
Heptachlor epoxide	1024-57-3	0.2
Hexachlorobenzene	118-74-1	1
N−Hexane	110-54-3	600
Hydrogen sulfide	7783-06-04	30
Lead	7439-92-1	5
Lindane	58-89-9	0.2
Manganese	7439-96-5	300
Mercury	7439-97-6	2
Methanol	67-56-1	5000
Methoxychlor	72-43-5	40
Methylene chloride	75-09-2	5
Methyl ethyl ketone (MEK)	78-93-3	4 mg/l
Methyl isobutyl ketone (MIBK)	108-10-1	500
Methyl tert−butyl ether (MTBE)	1634-04-4	60
Metolachlor/s−Metolachlor	51218-45-2	100
Metolachlor ethane sulfonic acid + oxanilic acid (Metolachlor − ESA + OXA)	947601-85-6; 152019-73-3	1.3 mg/l
Metribuzin	21087-64-9	70
Molybdenum	7439-98-7	40
Monochlorobenzene	108-90-7	100
Naphthalene	91-20-3	100
Nickel	7440-02-0	100
Nitrate (as N)	14797-55-8	10 mg/l
Nitrate + Nitrite (as N)	14797-55-8	10 mg/l
Nitrite (as N)	14797-65-0	1 mg/1
N−Nitrosodiphenylamine	62-75-9	7
Polycyclic Aromatic Hydrocarbons		0.1
Pentachlorophenol (PCP)	87-86-5	1
Perchlorate	14797-73-0	1
Phenol	108-95-2	2 mg/l
Picloram	1918-02-01	500
Polychlorinated biphenyls (PCBs)	53469-21-9	0.03
Prometon	1610-18-0	100
Propazine	139-40-2	10
Pyrene	129-00-0	250
Pyridine	110-86-1	10
Radium 226 and 228	7440-14-4	5.0 pCi/l
Radium 226	13982-63-3	3.0 pCi/l
Selenium	7782-49-2	50
Silver	7440-22-4	50
Simazine	122-34-9	4

Substance	CAS Number	Cleanup Levels (in µg/L) unless otherwise noted
Styrene	100-42-5	100
Tertiary Butyl Alcohol (TBA)	75-65-0	12
1,1,1,2−Tetrachloroethane	630-20-6	70
1,1,2,2−Tetrachloroethane	79-34-5	0.2
Tetrachloroethylene	127-18-4	5
Tetrahydrofuran	109-99-9	50
Thallium	7440-28-0	2
Toluene	108-88-3	40
Total Petroleum Hydrocarbons		1000
Toxaphene	8001-35-2	3
1,2,4−Trichlorobenzene	120-82-1	70
1,1,1−Trichloroethane	71-55-6	200
1,1,2−Trichloroethane	79-00-5	5
Trichloroethylene (TCE)	79-01-6	5
2,4,5−Trichlorophenoxy−propionic acid (2,4,5-TP)	93-72-1	50
1,2,3−Trichloropropane	96-18-4	60
Trifluralin	1582-09-8	7.5
Trimethylbenzenes (1,2,4- and 1,3,5-combined)	95-63-6, 108-67-8	480
Vanadium	1314-62-1	30
Vinyl chloride	75-01-4	0.2
Xylene[3]	1330-20-7	20

* Total chlorinated atrazine residues includes parent compound and the following metabolites of health concern: 2-chloro-4-amino-6-isopropylamino-s-tiazine (formally deethylatrazine), 2-chloro-4-amino-6-ethylamino-s-triazine (formally deisopropylatrazine) and 2-chloro-4,6-diamino-s-triazine (formally diaminoatrazine).

** Total coliform bacteria may not be present in any 100 ml sample using either the membrane filter (MF) technique, the presence-absence (P-A) coliform test, the minimal medium ONPG-MUG (MMO-MUG) test or not present in any 10 ml portion of the 10-tube multiple tube fermentation (MTF) technique.

[1] "Cyanide, free" refers to the simple cyanides (HCN, CN^-) and/or readily dissociable metal-cyanide complexes. Free cyanide is regulatorily equivalent to cyanide quantified by approved analytical methods for "amendable cyanide" or "available cyanide".

[2] Dinitrotoluene, Total Residues includes the dinitrotoluene (DNT) isomers: 2,3-DNT, 2,4-DNT, 2,5-DNT, 2,6-DNT, 3,4-DNT, and 3,5-DNT.

[3] Xylene includes meta-, orth-, and para-xylene combined.

A-4: Sediment Cleanup Levels

The following charts, Chart I and Chart II, indicate the minimum numerical cleanup levels for contamination in sediments caused by the listed hazardous substances.

Chart I indicates the sediment cleanup levels for the protection of human health. These cleanup levels are given in µg of contaminant/kg of organic carbon.

Chart II indicates the sediment cleanup levels for the protection of sediment-dwelling organisms. The cleanup levels in Chart II are given in the units shown in the chart. To the extent that there are two sediment standards for the same compound the lower standard shall control. Response actions must also comply with the following narrative standards for sediments.

In the case of a substance for which there is no numerical standard in Chart I, the following narrative standard shall apply:

> Bioaccumulative substances shall not occur in sediments, either singly or in combination at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including sediment-dwelling organisms and biological communities.

In the case of a substance for which there is no numerical standard in Chart II, the following narrative standard shall apply:

> Toxic substances shall not occur in sediments, either singly or in combination, at concentrations that cause, or can reasonably be expected to cause, injury to human health or biological resources including sediment-dwelling organisms and biological communities.

These numerical sediment cleanup levels and narrative sediment cleanup levels shall remain in effect until the Department amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment.

For substances not listed below, refer to the EPA Region III BTAG Freshwater Sediment Screening Benchmarks.

Chart I. Sediment Cleanup Levels for the Protection of Human Health

Substance	Cleanup Levels (in µg/kg) unless otherwise noted
Polycyclic Aromatic Hydrocarbons	
Benzo(a)pyrene	21.6
Dibenz[a,h]anthracene	21.6
Benz[a]anthracene	21.6
Chrysene	13.8
Benzo(b)fluoranthene	21.6
Benzo(k)fluoranthene	21.6
Ideno(a,2,3-cd)pyrene	21.6
Polychlorinated Biphenyls	

Substance	Cleanup Levels (in µg/kg) unless otherwise noted
Aroclor 1016	1.54
Aroclor 1242	0.533
Aroclor 1248	0.533
Aroclor 1254	0.533
Aroclor 1260	0.533
Total PCBs	0.533
Pesticides	
Aldrin	0.0408
Chlordane	0.533
Dieldrin	0.0439
p,p-DDD	2.85
p,p-DDE	1.72
p,p-DDT	2.04
Total DDT	2.54
Endosulfan	11300
Endrin	172
Heptachlor	0.408
Heptachlor epoxide	0.204
Alpha-hexachlorocyclohexane (HCH)	0.295
Beta-HCH	1.00
Technical-HCH	1.03
Lindane (gamma-HCH)	1.44
Mirex	17.8
Toxaphene	5.08
Dioxins and Furans	
1,2,3,4, 6,7,8-Heptachlorodibenzo-p-dioxin	3.76
1,2,3,4,6,7,8-Heptachlorodibenzofuran	3.76
1,2,3,4,7,8,9-Heptachlorodibenzofuran	3.76
1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,4,7,8-Hexachlorodibenzofuran	0.0144
1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,6,7,8-Hexachlorodibenzofuran	0.0144
1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	0.0144
1,2,3,7,8,9-Hexachlorodibenzofuran	0.0144
1,2,3,7,8-Pentachlorodibenzo-p-dioxin	0.00288
1,2,3,7, 8-Pentachlorodibenzofuran	0.00815
2,3,4,6,7,8-Hexachlorodibenzofuran	0.0144
2,3,4,7,8-Pentachlorodibenzofuran	0.000972
2,3,7,8-Tetrachlorodibenzo-p-dioxin	0.0000470
2,3,7,8-Tetrachlorodibenzofuran	0.00408
Octachlorodibenzodioxin	37.6
Octachlorodibenzofuran	37.6

Chart II. Sediment Cleanup Levels for the Protection of Sediment-dwelling Organisms

Metals	
Substance	**Cleanup Levels *(in mg/kg Dry Weight)***
Antimony	2.0
Arsenic	9.79
Cadmium	0.99
Chromium	43.4
Copper	31.6
Lead	35.8
Mercury	0.18
Nickel	22.7
Silver	1.6
Zinc	121.0
Polycyclic Aromatic Hydrocarbons	***(µg/kg Dry Weight)***
Anthracene	57.2
Fluorene	77.4
Naphthalene	176
Phenanthrene	204
Benz[a]anthracene	108
Benzo(a)pyrene	150
Chrysene	166
Fluoranthene	423
Pyrene	195
Total PAHs	1610
Polychlorinated Biphenyls	***(µg/kg Dry Weight)***
Total PCBs	59.8
Organochlorine Pesticides	***(µg/kg Dry Weight)***
Chlordane	3.24
Diedrin	1.90
Sum DDD	4.88
Sum DDE	3.16
Sum DDT	4.16
Total DDTs	5.28
Endrin	2.22
Heptachlor Epoxide	2.47
Lindane (Gamma-BHC)	2.37

A-5: Soil Cleanup Levels

The following chart indicates the minimum cleanup levels for soil, in terms of amount of individual hazardous substance per unit mass, for the hazardous substances listed. These cleanup levels shall remain in effect until the Department amends them. The Department may also establish more stringent cleanup levels for a specific site, when, based on a site-specific evaluation, the Department determines that such levels are necessary to protect human health and the environment. For substances not listed below, the Department may refer to the Wisconsin Soil Cleanup Standards, Chapter NR 720.

Substance	**CAS Number**	**Cleanup Levels *(in mg/kg)***
Arsenic	7440-38-2	20.0
Benzene	71-43-2	0.5
Cadmium	7440-43-9	2.0
Chromium	7440-47-3	100.0
DDT	50-29-3	1.0
Ethylbenzene	100-41-4	20.0
Ethylene dibromide	106-93-4	0.001
Lead	7439-92-1	250
Lindane	58-89-9	1.0
Methylene chloride	75-09-2	0.5
Mercury (inorganic)	7439-97-6	1.0
PAHs (carcinogenic)		1.0
PCB Mixtures		1.0
Tetrachloroethylene	127-18-4	0.5
Toluene	108-88-3	40.0
TPH (gasoline)		100.0
TPH (diesel)		200.0
TPH (other)		200.0
1, 1, 1, Trichloroethane	71-55-6	20.0
Trichloroethylene	79-01-5	0.5
Xylenes	1330-20-7	20.0