

TITLE 15 - ENVIRONMENT

CHAPTER 7 – EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

Legislative History: The “Emergency Planning and Community Right-to-Know Ordinance,” Ordinance No. 98-02, was enacted by Resolution No. 98-210 effective June 12, 1998.

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**CHAPTER 7 – EMERGENCY PLANNING AND COMMUNITY
RIGHT-TO-KNOW**

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**TOHONO O'ODHAM NATION
EMERGENCY PLANNING AND COMMUNITY
RIGHT-TO-KNOW
ORDINANCE**



Ordinance No. 98-02

§1. PURPOSE

- (a) Emergency Planning. This Ordinance provides the framework for developing and maintaining Emergency Response Plans for emergencies involving Hazardous Materials as well as those caused by natural disasters. This Ordinance establishes a Tribal Emergency Response Commission (TERC) and sets out procedures for forming Local Emergency Planning Committees (LEPCs). This Ordinance also sets forth facility notification requirements necessary for the development and implementation of Emergency Response Plans.
- (b) Community Right-To-Know. Additionally, this Ordinance contains reporting and notification requirements which provide the O'odham community with important information on the nature, location, and quantity of Hazardous Materials in their community.

§2. LEGISLATIVE FINDINGS AND AUTHORITY

- (a) The Tohono O'odham Legislative Council finds that:
 - (1) The presence of Hazardous Materials within the lands of the Nation threatens or has a direct effect on the health and welfare of the Tohono O'odham Nation and its members and all persons present on the lands of the Nation; and
 - (2) It is in the interest of the Nation to plan and prepare for emergencies involving Hazardous Materials as well as those caused by natural disasters; and
 - (3) Effective emergency planning necessitates adequate reporting and notification requirements.
- (b) This Ordinance is adopted under the inherent sovereign authority of the Nation.

§3. DEFINITIONS

In this Ordinance, unless otherwise provided:

- (a) "*CAS number*" means the chemical abstract service registry number of a chemical.
- (b) "*Council*" means the Legislative Council of the Tohono O'odham Nation.

- (c) *"Emergency Planning District"* means the geographic area subject to an Emergency Response Plan of an LEPC.
- (d) *"Emergency Response Organization"* means any tribal, other governmental, or private entity equipped or created for responding to environmental, health, or other emergencies. This definition includes, among other things, federal agencies and their departments, police departments, hospitals, fire departments, emergency airlift or other medical response entities, and environmental cleanup or containment crews or companies.
- (e) *"Extremely Hazardous Substance"* means a substance listed in 40 CFR Part 355, Appendix A and B, as that part may be amended or revised in the future, or as listed and published by the Nation.
- (f) *"Facility"* means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person (or by any person which controls, is controlled by, or under common control with such person). *Facility* shall include manmade structures as well as all natural structures in which chemicals are purposely placed or removed through human means such that it functions as a containment structure. For purposes of emergency release notification, the term includes motor vehicles, trains, and aircraft.
- (g) *"Hazardous Chemical"* means a substance defined as a Hazardous Chemical in 29 CFR §1910.1200(c), except that such term does not include the following: (1) Any food, food additive, color additive or cosmetic regulated by the Food and Drug Administration; or (2) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- (h) *"Hazardous Materials"* includes all Extremely Hazardous Substances, Hazardous Chemicals, Hazardous Substances, or Toxic Chemicals, as defined in this Ordinance
- (i) *"Hazardous Substance"* means a substance on the list defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. §9601 (14)), as amended by SARA, and regulations promulgated under CERCLA, currently located at 40 CFR §302.4, or a substance defined as a Hazardous Substance by the Tohono O'odham Nation.
- (j) *"Lands of the Nation"* means all lands within the territorial jurisdiction of the Nation, whether or not the Nation has an ownership interest in the land, including but not limited to tribal trust land, allotted land, patented land, homesteads, leased land, and rights of way. Included within the territorial jurisdiction of the Nation are the lands established by the following Executive Orders: December 12, 1882, modified by June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917 (Sells); and the following Acts of Congress: the Act of February 21, 1931 (Sells); the Act of September 10, 1978 (Florence); and such other lands as may

have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.

- (k) "*LEPC*" means a Local Emergency Planning Committee appointed by the TERC.
- (l) "*Manufacture*" means to produce, prepare, import or compound a Toxic Chemical.
- (m) *Material Safety Data Sheets ("MSDS")*, means written or printed material concerning a Hazardous Chemical which is prepared in accordance with 29 CFR §1910.1200(g).
- (n) "*Nation*" means the Tohono O'odham Nation, a federally recognized Indian tribe, organized under a constitution adopted by the Nation on January 18, 1986 and approved by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476).
- (o) "*Person*" means any individual, trust, firm, joint stock company, corporation (including government and tribal corporations), partnership, association, State, Federal Government or Division or Agency thereof, Nation, municipality, commission, political subdivision of a State or Nation, or interstate body.
- (p) "*Process*" means the preparation of a Toxic Chemical after its manufacture for distribution in commerce either:
 - (1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance, or
 - (2) As part of an article containing the Toxic Chemical. Process also applies to the processing of a Toxic Chemical contained in a mixture or trade name product.
- (q) "*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) of any Hazardous Chemical, Extremely Hazardous Substance, Toxic Chemical, or Hazardous Substance.
- (r) "*Reportable Quantity*" means a quantity of an Extremely Hazardous Substance or a Hazardous Substance as listed in the Title III List of Lists, EPA Document Number EPA 740-R-95-001, April 1995, as revised and amended, or as listed and published by the Nation, that has been released into the environment.
- (s) "*SARA III*" means Title III of the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499), also called the Emergency Planning and Community Right-to-Know Act, as amended, found at 42 U.S.C. §11001 to §11050.
- (t) "*TERC*" means the Nation's Tribal Emergency Response Commission, which shall have the combined duties and responsibilities of an Emergency Response Commission and a Local Emergency Planning Committee.

- (u) *“Threshold Planning Quantity”* means a quantity of a substance that triggers reporting requirements under this Ordinance, as listed in 40 CFR Part 355, Appendix A and B, as that part may be amended or revised in the future, or as listed and published by the Nation.
- (v) *“Toxic Chemical”* means a substance listed as an “EPCRA Section 313 Toxic Chemical” in the Title III List of Lists, EPA Document Number EPA 740-R-95-001, April 1995, as revised and amended, or as listed and published by the Nation.
- (w) *“Trade Secret”* means any confidential formula, pattern, process, device, information or compilation of information that is used in a submitter’s business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it.

§4. TRIBAL EMERGENCY RESPONSE COMMISSION: FORMATION & RULES OF OPERATION.

- (a) The Tribal Emergency Response Commission of the Nation shall be immediately established.
 - (1) The TERC shall have at least five (5) members, composed of the director, manager, chief, or respective designee, of the:
 - (A) Tohono O’odham Police Department,
 - (B) Tohono O’odham Nation Fire Department,
 - (C) Environmental Office, (or other named department with primary responsibility for environmental protection and natural resources on the Nation),
 - (D) Department of Planning & Economic Development,
 - (E) Districts of the Nation.
 - (2) The Chairperson of the Nation may request participation of representatives from entities not part of the Tohono O’odham Nation government, as ex-officio members of the TERC, for example:
 - (A) Tohono O’odham Utility Authority,
 - (B) Bureau of Indian Affairs,
 - (C) Indian Health Service,
 - (D) Indian Oasis School District.

Ex-Officio members shall not have voting powers on the TERC, shall not be eligible to be an official of the TERC, and shall not be considered members of the TERC for purposes of legal action or legal representation.

- (3) The Chairperson of the Nation may appoint sufficient other individuals from the list in §6(b)(1) as necessary to carry out the duties and responsibilities of the TERC.

- (b) The Chairperson of the TERC shall be appointed by the Chairperson of the Nation, with the approval of the Council, from among the members of the TERC. The Chairperson of the TERC shall also appoint a Coordinator for the TERC, who shall serve as the central contact for the regulated facilities.
- (c) Any member of the TERC may be removed by the Chairperson of the Nation upon the recommendation of a majority of the full membership of the TERC for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. A TERC member may also be removed voluntarily upon request and approval by a majority of the full membership of the TERC and approval of the Chairperson of the Nation. Vacancies shall be filled immediately by the director, manager, or chief of the department or agency which the removed member represented.
- (d) Members of the TERC and the Chairperson of the TERC shall serve until removed.
- (e) The members of the TERC shall serve without compensation. Members whose employers do not pay their travel costs are eligible for reimbursement or prepayment for travel and other expenses incurred while fulfilling duties of the TERC, subject to the availability of funds.
- (f) The TERC shall meet as often as necessary and may organize itself into such support committees as necessary to implement this Ordinance. The full TERC shall meet at least four (4) times a year.
- (g) A majority of the TERC shall constitute a quorum to transact business. When a vacancy occurs in the TERC, the remaining commissioners may exercise all the powers of the TERC until the vacancy is filled. The TERC shall annually elect a Vice-Chairperson to act in the absence or disability of the Chairperson or in case of vacancy in the office of Chairperson.
- (h) The TERC may hold regularly scheduled meetings in any place within the lands of the Nation. Sessions of the TERC shall be public, with reasonable notice provided. The TERC shall develop rules for providing such reasonable notice, including provisions for emergency or other special meetings.
- (i) A record shall be kept of all meetings. All substantive issues shall be decided by majority vote of the total votes cast. The vote of each member shall be recorded. The TERC shall develop rules for maintaining a public record of its meetings.
- (j) The TERC shall appoint a Coordinator, who shall be responsible for:
 - (1) providing necessary administrative support;
 - (2) maintaining the records of the TERC, including Emergency Response Plans, Tier II reports, Material Safety Data Sheets, Inventory Forms, and any other relevant data.

§5. TRIBAL EMERGENCY RESPONSE COMMISSION; GENERAL POWERS

- (a) The TERC shall administer this Ordinance and rules adopted under this Ordinance. The TERC possesses the combined authority and responsibilities of a Tribal

Emergency Response Commission and a Local Emergency Planning Committee as set forth in this Ordinance.

- (b) The TERC has full power, jurisdiction and authority to:
- (1) Formulate and adopt rules, regulations and forms for effecting the purposes of this Ordinance. The authority to adopt rules includes establishing:
 - (A) Procedures for handling public information requests.
 - (B) Procedures and implementing programs for chemical emergency planning and preparedness.
 - (C) Community Right-To-Know program reporting requirements.
 - (D) Release reporting requirements, which may include reporting requirements in addition to those required by Federal law.
 - (E) Means for supervising the activities of LEPCs, if established under §6(a)(1) of this Ordinance.
 - (2) Review and approve any Emergency Response Plan created by a LEPC.
 - (3) Procure by contract the temporary or intermittent services of experts or consultants if such services are to be performed on a part-time or fee-for-services basis and do not involve the performance of administrative duties, subject to the availability of funds appropriated by the Legislative Council.
 - (4) Prepare, coordinate proposals, and administer federal grants available under SARA III and any other relevant programs. All grant applications and awards shall be approved by the Chairperson of the Nation and the Legislative Council.
 - (5) Establish standard operating procedures for Hazardous Materials management and emergency response for members of the TERC, LEPCs, and person operating within the lands of the Nation.
 - (6) Collect, collate and publish statistical and other information relating to Hazardous Materials within the lands of the Nation. The TERC shall prepare an annual report on Hazardous Materials management and emergency response for submission to the Council by December 31 of the reporting year, which shall end on September 30.
 - (7) Conduct or participate in investigations of causes, origins, and circumstances of Hazardous Materials incidents within the lands of the Nation or affecting the Nation's populace or environment.
 - (8) Provide training, and seek funding for such training, in the control, containment, transportation, and handling of Hazardous Materials and cooperate with other governments (local, tribal, state and federal), institutions and groups to provide such training.

- (9) Employ specialized testing services to evaluate evidence and conditions involved in Hazardous Materials incidents subject to the availability of funding for such purposes.
- (10) Any action taken by the TERC pursuant to § 5(a)(3) and (4), shall be taken only upon approval by the Council.

§6. LOCAL EMERGENCY PLANNING COMMITTEES

- (a) Creation of Local Emergency Planning Committees in the Districts.
 - (1) Each of the eleven (11) Districts of the Nation may choose to have its own LEPC. If it so chooses, it shall pass a resolution that:
 - (A) creates a LEPC for the District,
 - (B) appoints members to the LEPC, in accordance with § 6(b), and
 - (C) agrees to follow this Ordinance and any other relevant laws and codes.
 - (2) Each District that chooses to have a LEPC shall be designated as one Emergency Planning District for the purposes of preparing and implementing an Emergency Response Plan.
 - (3) The TERC shall perform the functions of an LEPC for those Districts that do not choose to have their own LEPC. All Districts that do not choose to have their own LEPC shall be considered as one Emergency Planning District for the purposes of preparing and implementing an Emergency Response Plan.
- (b) Composition of LEPCs
 - (1) A LEPC may include one or more representatives from each of the following enumerated groups or organizations:
 - (A) Elected officials of the Nation or the Districts
 - (B) Law enforcement, ranger, civil defense, fire fighting, first aid, health, environmental, hospital and transportation personnel.
 - (C) Broadcast and print media.
 - (D) Community groups.
 - (E) Owners or operators of facilities subject to the requirements of this Ordinance.
- (c) All LEPCs shall appoint a chairperson and shall adopt procedural rules by which the LEPC shall function. Such rules shall be effective upon approval by the District Council.

§7. COMPREHENSIVE EMERGENCY RESPONSE PLANS

- (a) Each LEPC shall prepare and annually review a comprehensive Emergency Response Plan. This Plan shall be based on information collected from the TERC, Departments of the Nation, District sources, as well as information obtained from facilities subject to this Ordinance, in order to address emergencies due to releases from facilities and transportation vehicles, and natural disasters and other emergencies, in its Emergency Planning District.
- (b) After completing the Emergency Response Plan, the LEPC shall provide a copy of the plan to the Council and submit a copy to the TERC. The TERC shall review the plan and make recommendations to the LEPC on revisions that may be necessary to ensure that it meets the requirements of this Ordinance or any rules adopted under this Ordinance. The TERC shall further ensure that the plan is coordinated with the Emergency Response Plans of adjoining emergency planning districts, as applicable.
- (c) The LEPC shall evaluate the need for resources necessary to develop, implement, and exercise the Emergency Response Plan in its Emergency Response District and shall make recommendations to the TERC regarding these needs.
- (d) The Emergency Response Plan shall include:
 - (1) The identification of Emergency Response Organizations in, adjacent to, or otherwise available to the Emergency Planning District. The Emergency Response Organizations shall work with the TERC in making determinations necessary to implement the Emergency Response Plan.
 - (2) Mutual aid agreements with other jurisdictions entered into by the Nation, and any allocation of emergency response resources for responding to releases subject to this section, if applicable.
 - (3) Identification of facilities subject to the emergency planning requirements of this Ordinance that are within the emergency planning district; routes likely to be used for the transportation of Extremely Hazardous Substances;
 - (4) Identify vulnerable facilities, such as schools and hospitals, within the Emergency Planning District.
 - (5) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release or emergency, as defined herein;
 - (6) Designation of a community emergency coordinator for each community and a facility emergency coordinator for each facility subject to the emergency planning requirements of this Ordinance, who will make determinations necessary to implement the Emergency Response Plan;
 - (7) Procedures providing reliable, effective, and timely notification by the facility emergency coordinator and the community emergency coordinator to persons designated in the Emergency Response Plan, and to the public, that a release has occurred, or that a natural disaster is imminent;

- (8) Methods for determining the occurrence of a release or emergency and the area or population likely to be affected;
- (9) A description of emergency equipment and facilities in the community and at each facility in the community subject to the emergency planning requirements of this Ordinance, including identification of the persons responsible for such equipment and facilities;
- (10) Evacuation plans, including provisions for precautionary evacuation and alternative traffic routes;
- (11) Training programs, including schedules for training of local emergency response and medical personnel; and
- (12) Methods and schedules for exercising the Emergency Response Plan.

§8. EXTREMELY HAZARDOUS SUBSTANCES

- (a) Unless otherwise provided, a substance is subject to the requirements of this Ordinance if it is an Extremely Hazardous Substance as defined in this Ordinance, and it is held in quantities at or above the threshold planning quantity.

§9. FACILITIES; EMERGENCY PLANNING REQUIREMENTS

- (a) A facility is subject to emergency planning requirements if a substance identified under § 8 of this Ordinance is present at the facility in an amount at or in excess of the threshold planning quantity for that substance.
- (b) The owner or operator of a facility subject to this section shall notify the TERC that such facility is subject to the requirements of this Ordinance.
- (c) The TERC may designate additional facilities which are subject to this Ordinance. The designation shall be accomplished after notification to the facility of the proposed designation.
- (d) The owner or operator of a facility subject to this Ordinance shall provide to the LEPC the identity of a facility representative who will participate in the emergency planning process as the facility emergency coordinator.
- (e) Upon request, the owner or operator of a facility subject to this Ordinance shall provide to the LEPC any information necessary for developing and implementing the emergency plan. Such information may include:
 - (1) Names, addresses and emergency telephone numbers of a facility emergency coordinator and alternate.
 - (2) Description of employee emergency response training and facility emergency preparedness programs.
 - (3) Description of appropriate emergency equipment necessary to respond to a release.

- (4) Description of emergency response procedures including notification procedures and evacuation plans in the event of a release.
 - (5) Identification of transport routes and transportation methods used to transport Extremely Hazardous Substances to and from the facility.
 - (6) Identification of hazardous substances or Hazardous Chemicals present at the facility, including submittal of Material Safety Data Sheets or other information as provided for in this Ordinance.
- (f) Facilities shall work with the TERC and LEPC to reduce, to the maximum extent practicable, inventories of Extremely Hazardous Substances, Hazardous Chemicals, and Toxic Chemicals.

§10. EMERGENCY NOTIFICATION OF REPORTABLE RELEASES

- (a) If a release of a reportable quantity of an Extremely Hazardous Substance or a Hazardous Substance occurs from a facility, the owner or operator of the facility shall immediately notify the Tohono O'odham Police Department, through the 911 operator or other working number, who shall provide such notification as required under the Tohono O'odham Hazardous Material Accident or Spill Initial Notification Scheme.
- (b) The notification shall occur immediately after the facility emergency coordinator or designee, or operator or owner of the transportation vehicle has knowledge of the reportable release, unless impracticable under the circumstances. The notice of the reportable release shall include the following to the extent known at the time of the notice and as long as no delay in responding to the emergency results:
 - (1) The specific location of the release.
 - (2) The chemical name or identity of substances released and a description of the container or vessel from which the release occurred.
 - (3) An estimate of the quantity of substances which were released into the environment.
 - (4) The time and duration of the release.
 - (5) The medium or media into which the release occurred.
 - (6) Any known or anticipated acute or chronic health risks associated with the release and, where appropriate, advice regarding medical attention necessary for exposed individuals.
 - (7) Proper precautions to take as a result of the release, including evacuation and other proposed response actions.
 - (8) The name and telephone number of the person or persons to be contacted for further information.

- (c) Within thirty (30) days after a reportable release, the owner or operator of a facility where a release occurred requiring notification pursuant to this section shall submit to the LEPC and to the TERC a written follow-up emergency notice, stating and updating the information originally provided pursuant to subsection (b) of this section and including the following additional information:
 - (1) Actions taken to respond to and contain the release,
 - (2) Any known or anticipated acute or chronic health risks associated with the release,
 - (3) If appropriate, advice regarding medical attention necessary for exposed individuals, and
 - (4) Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.
- (d) After any additional information becomes known, the owner or operator shall update the notice in writing within seven (7) calendar days.

§11. LISTS OF HAZARDOUS CHEMICALS; MATERIAL SAFETY DATA SHEETS

- (a) A person who owns or operates a facility which is subject to emergency planning under this Ordinance, shall submit to the LEPC, the TERC, and the fire department with jurisdiction over the facility a MSDS for each chemical, or a list of Hazardous Chemicals, present at the facility at any one time in amounts equal to or greater than 10,000 pounds and for all Extremely Hazardous Substances present at the facility in an amount greater than or equal to 500 pounds, or the threshold planning quantity, whichever is lower.
- (b) If a list of Hazardous Chemicals is submitted under this section it shall include:
 - (1) The chemical name or the common name of each chemical for which a MSDS is required, categorized as required by the TERC, and
 - (2) The CAS number applicable to each such chemical and substance, if available.
 - (3) Any hazardous component of each such chemical as provided on the MSDS.
 - (4) An indication of whether the owner elects to withhold information about the Hazardous Chemical or Extremely Hazardous Substance from disclosure as a trade secret.
- (c) On request of the LEPC, the TERC, or the fire department with jurisdiction over the facility, an owner or operator of a facility who has submitted a list pursuant to this section shall also submit the MSDS for any chemical on the list to the requesting agency within thirty(30) days of the request.
- (d) On request by any person, the LEPC may make available a MSDS or transmit the request to the TERC which shall make the MSDS available, subject to the trade secret provisions and regulations adopted under SARA III (42 U.S.C. §11042, 40

CFR Part 350). If the LEPC or TERC does not have the requested MSDS, the LEPC or TERC shall request the MSDS from the facility owner or operator. The facility owner or operator shall make the MSDS available within thirty (30) days after receiving the request to the LEPC or TERC and the LEPC or TERC shall make the MSDS available to the requesting person subject to the trade secret provisions and regulations adopted under SARA III (42 U.S.C. §11042, 40 CFR Part 350).

- (e) Within three (3) months after discovery by an owner or operator of a facility of significant new information concerning an aspect of a Hazardous Chemical for which a list or MSDS was submitted, or within three (3) months after a facility obtains a new Hazardous Chemical subject to the reporting requirements of this section, the owner or operator shall update and submit a revised list or MSDS to the LEPC, the TERC and the fire department with jurisdiction over the facility.

§12. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORM

- (a) A person who owns or operates a facility which is required to provide a MSDS or chemical listing under Section 11 shall submit to the LEPC, the TERC, and the fire department with jurisdiction over the facility, an emergency and hazardous chemical inventory form (Tier II form) provided by the TERC.
- (b) The Tier II form shall be submitted on or before March 1 of each year, and shall contain data on Hazardous Chemicals present at the facility during the preceding calendar year above threshold planning quantities.
- (c) The Tier II inventory form shall contain the following information:
 - (1) The chemical name or the common name of the chemical as provided on the material safety data sheet and the CAS number.
 - (2) An estimate, in ranges, of the maximum amount of the Hazardous Chemical present at the facility at any time during the preceding year.
 - (3) An estimate, in ranges, of the average daily amount of the Hazardous Chemical present at the facility during the previous year.
 - (4) A brief description of the manner of storage of Hazardous Chemical.
 - (5) The location of the Hazardous Chemical at the facility.
 - (6) An indication of whether the owner elects to withhold location information or other information about a specific Hazardous Chemical from disclosure to the public.
- (d) An owner or operator of a facility subject to this section shall submit the information required by this section on the Tier II inventory form provided by the TERC.

§13. TOXIC CHEMICAL RELEASE FORMS

- (a) A person who owns or operates a facility subject to the requirements of this Ordinance shall complete a Toxic Chemical release form as provided by the TERC for each chemical that is:
 - (1) a Toxic Chemical as defined in this Ordinance, and
 - (2) manufactured, processed, or otherwise used during the preceding year in quantities exceeding 10,000 pounds.
- (b) The release forms required under this section are intended to provide information to the Nation and to the public, including citizens of communities surrounding facilities covered by this section. The release form shall be available consistent with the trade secret provisions of SARA III (42 U.S.C. §11042, 40 CFR Part 350) to inform persons about releases of Toxic Chemicals to the environment and to assist the Nation in reducing chemical releases.
- (c) The form shall be submitted to the TERC on or before July 1 of each year and shall contain data reflecting releases during the preceding calendar year.

§14. INSPECTION BY TOHONO O'ODHAM FIRE DEPARTMENT

- (a) For the purposes of this Ordinance, upon 72 hour notice, the Tohono O'odham Fire Department may enter and inspect facilities in order to determine compliance with this Ordinance and for gathering information on Hazardous Chemicals for the purposes of emergency planning. Facilities within the lands of the Nation shall allow on-site inspection and shall provide to the Tohono O'odham Fire Department specific location information on Hazardous Materials at the facility.
- (b) At the time of such inspection, the manager or the manager's designee shall, upon inquiry, advise the Tohono O'odham Fire Department of the existence and location of any substance whose character is unknown, but which is suspected of being subject to regulation under this Ordinance. The Tohono O'odham Fire Department shall be allowed access to such substance and, if it is subject to such regulation, the Tohono O'odham Fire Department may assist the inspected party to undertake proper storage and handling, or disposal. The Tohono O'odham Fire Department shall not, however, be responsible for such disposal, and that responsibility shall remain at all times with the facility and its manager(s).
- (c) If a facility denies access for an inspection under this Ordinance, then the Tohono O'odham Fire Chief, represented by the Tohono O'odham Attorney General's Office may apply to the Tohono O'odham Judicial Court for an order authorizing inspection in matters arising under this Ordinance. Such order may be issued with or without a showing of probable cause that a violation of this Ordinance has been or is being committed. If issued without probable cause, the applicant must show that the inspection is a part of a neutral scheme of inspection and review pursuant to this Ordinance.
- (d) The Tohono O'odham Judicial Court has jurisdiction upon the filing of an affidavit by the Tohono O'odham Fire Department to issue an order for the inspection of a

facility subject to this Ordinance. If necessary, the order shall be implemented with the assistance of the Tohono O'odham Police Department.

§15. VIOLATION; PENALTIES AND INJUNCTIVE RELIEF

- (a) *Civil penalties.* Any person as defined in §3(o) who fails to comply with the provisions of this Ordinance shall be subject to civil penalties of up to \$25,000 per day for each day during which the violation continues. In the case of a second or subsequent violation, any such person may be subject to civil penalties of up to \$75,000 for each day the violation continues.
- (b) *Injunctive relief.* Upon proper application to the Tohono O'odham Judicial Court through the Tohono O'odham Attorney General's Office, an injunction may be issued to compel action or to prohibit action in order to achieve compliance with this Ordinance.
- (c) Any fines or penalties collected shall be transmitted to the Nation's Accounting Department for deposit in the Environmental Trust Fund as established by Section 703 of the Tohono O'odham Solid Waste Management Code.

§16. IMMINENT DANGER

- (a) The Tohono O'odham Judicial Court has jurisdiction upon the filing of a complaint by the TERC through the Tohono O'odham Attorney General's Office to restrain any Hazardous Materials, conditions, practices, or transportation in any place within the lands of the Nation which could reasonably be expected to cause death or serious physical harm. Such authority may be immediately utilized where it reasonably appears that the imminence of such danger cannot be eliminated through other lawful available means. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove the imminent danger and may prohibit the presence of any individual in locations or under conditions where such imminent danger exists; except, however, that individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner shall not be so restrained.
- (b) Whenever and as soon as the TERC or its authorized representative concludes that the conditions or practices described in subsection (a) exist in any place within the lands of the Nation, it shall inform the general public or specific population affected of the imminent danger and the action being taken.

§17. NOT A CONSENT TO BE SUED OR WAIVER OF SOVEREIGN IMMUNITY

- (a) The establishment of the TERC and any LEPC, and the authority granted to them by this Ordinance shall not constitute consent to be sued nor a waiver of the sovereign immunity of the Nation, its agents, or representatives in any manner whatsoever.

§18. SEVERABILITY

- (a) If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

§19. REPEAL OF PRIOR AND INCONSISTENT LEGISLATION.

- (a) Enactment of this Ordinance repeals any prior legislation of the Nation which is inconsistent with this Code, and supersedes any prior enactments of the Districts which are inconsistent with this Code.