

St. Croix Tribal Council

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RESOLUTION NO. 06.09.05.02

HAZARDOUS MATERIAL RELEASE CONTINGENCY PLANNING ORDINANCE

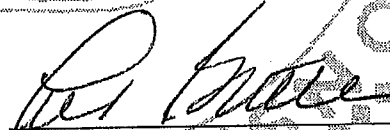
WHEREAS, the St. Croix Tribal Council is the governing body of the St. Croix Chippewa Indians of Wisconsin; and

WHEREAS, in order to protect human health and the environment the Tribe must have a contingency plan in the event of a release of hazardous materials;

NOW THEREFORE, BE IT RESOLVED that the St. Croix Tribe hereby approve the attached Hazardous Material Release Contingency Planning Ordinance.

CERTIFICATION

I, the undersigned, as Secretary/Treasurer of the Tribal Council of the St. Croix Chippewa Indians of Wisconsin hereby certify that the Tribal Council is composed of five (5) members, of whom four (4) were present, constituting a quorum at a meeting thereof duly called, convened, and held on this 9th day of June, 2005; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of four (4) members, zero (0) against, zero (0) abstaining, and that said resolution has not been rescinded or amended in any way.



Leo Butler, Secretary/Treasurer
St. Croix Tribal Council

David "Maabln" Merrill
Tribal Chairman
Round Lake Community

Michael L. Bearhart
Vice-Chairman
Maple Plain Community

Leo Butler
Secretary/Treasurer
Sand Lake Community

Gloria E. Benjamin
Member
Danbury Community

Lewis Taylor
Member
Sand Lake Community

APPENDIX
ST. CROIX BROWNFIELDS ORDINANCE
FEDERAL LAWS REFERRED TO IN ORDINANCE

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CROSS-REFERENCES

Sec. 100.02	40 CFR 260(4)(b)
	40 CFR 261.20-.24
	40 CFR 302.4 Table
Sec. 200.01, 700.04	42 U.S.C. 9601(35)(B)(ii)
Sec. 400.04	29 CFR 1910.120(l)(1) and (l)(2)
Sec. 400.06	42 U.S.C. 9621(d)(2)(B)(ii)
	40 CFR 300.400(g)(2)
Sec. 400.07	40 CFR 515

42 U.S.C. §9601 (35) (B) (ii)

(ii) Standards and practices. - Not later than 2 years after January 11, 2002, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

42 U.S.C. § 9621 (d) (2) (B) (ii)

(B) (i) In determining whether or not any water quality criteria under the Clean Water Act [33 U.S.C. 1251 et seq.] is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where-

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water then the assumed point of human exposure may be at such known and projected points of entry.

29 CFR 1910.120 (1) (1) and (1) (2)

(1) Emergency response by employees at uncontrolled hazardous waste sites--(1) Emergency response plan.

(i) An emergency response plan shall be developed and implemented by all employers within the scope of paragraphs (a)(1) (i)-(ii) of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, OSHA personnel and other governmental agencies with relevant responsibilities.

(ii) Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with 29 CFR 1910.38.

(2) Elements of an emergency response plan. The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:

- (i) Pre-emergency planning.
- (ii) Personnel roles, lines of authority, and communication.
- (iii) Emergency recognition and prevention.
- (iv) Safe distances and places of refuge.
- (v) Site security and control.
- (vi) Evacuation routes and procedures.
- (vii) Decontamination procedures which are not covered by the site safety and health plan.
- (viii) Emergency medical treatment and first aid.
- (ix) Emergency alerting and response procedures.
- (x) Critique of response and follow-up.
- (xi) PPE and emergency equipment.

40 CFR 260 (4) (b)

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

- (i) Receives and burns only
 - (A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and
 - (B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific waste which meet the standard in paragraphs (b) (6) (i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/crome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrometan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste.

(i) For purposes of Sec. 261.4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Sec. 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

- (A) Slag from primary copper processing;
- (B) Slag from primary lead processing;
- (C) Red and brown muds from bauxite refining;
- (D) Phosphogypsum from phosphoric acid production;
- (E) Slag from elemental phosphorus production;
- (F) Gasifier ash from coal gasification;
- (G) Process wastewater from coal gasification;

- (H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
- (I) Slag tailings from primary copper processing;
- (J) Fluorogypsum from hydrofluoric acid production;
- (K) Process wastewater from hydrofluoric acid production;
- (L) Air pollution control dust/sludge from iron blast furnaces;
- (M) Iron blast furnace slag;
- (N) Treated residue from roasting/leaching of chrome ore;
- (O) Process wastewater from primary magnesium processing by the anhydrous process;
- (P) Process wastewater from phosphoric acid production;
- (Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- (S) Chloride process waste solids from titanium tetrachloride production;
- (T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Sec. 261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under part 280 of this chapter.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) in Sec. 261.24 of this part that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until [insert date six months after publication]. New

operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003,

leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15)(v) after the emergency ends.

(16) Sludges resulting from the treatment of wastewaters (not including spent plating solutions) generated by the copper metallization process at the International Business Machines Corporation (IBM) semiconductor manufacturing facility in Essex Junction, VT, are exempt from the F006 listing, provided that:

(i) IBM provides the Agency with semi-annual reports (by January 15 and July 15 of each year) detailing constituent analyses measuring the concentrations of volatiles, semi-volatiles, and metals using methods presented in part 264, appendix IX of this chapter of both the plating solution utilized by, and the rinsewaters generated by, the copper metallization process;

(ii) IBM provides the agency with semi-annual reports (by January 15 and July 15 of each year), through the year 2004, or when IBM has achieved its facility-wide goal of a 40% reduction in greenhouse gas emissions from a 1995 base year (when normalized to production), whichever is first, that contain the following:

(A) Estimated greenhouse gas emissions, and estimated greenhouse gas emission reductions. Greenhouse gas emissions will be reported in terms of total mass emitted and mass emitted normalized to production; and

(B) The number of chemical vapor deposition chambers used in the semiconductor manufacturing production line that have been converted to either low flow C<INF>2</INF>F<INF>6</INF> or NF<INF>3</INF> during the reporting period and the number of such chambers remaining to be converted to achieve the facility goal for global warming gas emission reductions.

(iii) No significant changes are made to the copper metallization process such that any of the constituents listed in 40 CFR part 261, appendix VII as the basis for the F006 listing are introduced into the process.

(17) [Reserved]

(18) By-products resulting from the production of automobile air bag gas generants at the Autoliv ASP Inc. facility in Promontory Utah, (Autoliv) are exempt from the D003 listing, for a period of five years from May 9, 2001, provided that:

(i) The by-product gas generants are processed on-site in Autoliv's Metal Recovery Furnace (MRF).

(A) By-product gas generants must only be fed to the MRF when it is

operating in conformance with the State of Utah, Division of Air Quality's Approval Order DAQE-549-97.

(B) Combustion gas temperature must be maintained below 400 degrees Fahrenheit at the baghouse inlet.

(ii) Prior to processing in the MRF, the by-product gas generants are managed in accordance with the requirements specified in 40 CFR 262.34.

(iii) The Autoliv facility and the MRF are operated and managed in accordance with the requirements of 40 CFR Part 265, Subparts B, C, D, E, G, H, I, and O.

(iv) Residues derived from the processing of by-product gas generants in the MRF are managed in accordance with the requirements specified in 40 CFR Parts 262 and 268.

(v) The following testing of the MRF's stack gas emissions is conducted:

(A) An initial test shall be conducted within 30 operating days of starting feed of by-product gas generants to the MRF. EPA may extend this deadline, at the request of Autoliv, when good cause is shown. The initial test shall consist of three duplicate runs sampling for:

(1) Particulate matter using Method 5 as specified in 40 CFR Part 60, Appendix A.

(2) The metals Aluminum, Arsenic, Barium, Beryllium, Boron, Cadmium, Chromium, Cobalt, Copper, Lead, and Nickel using Method 29 as specified in 40 CFR Part 60, Appendix A.

(3) Polychlorinated di-benzo dioxins and furans using Method 23 0023A as specified in 40 CFR Part 60, Appendix A.

(4) Carbon monoxide using Method 10 as specified in 40 CFR Part 60, Appendix A.

(B) After the initial test is completed, an annual stack test (12 months from the previous initial stack test) of the MRF shall be conducted. The annual tests shall consist of three duplicate runs using Method 29 and Method 5 as specified in 40 CFR Part 60, Appendix A.

(C) Testing shall be conducted while by-product gas generants are fed to the MRF at no less than 90% of the planned maximum feed rate, and with the MRF operating parameters within normal ranges.

(D) Initial stack testing results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to the State of Utah and EPA within 60 days of the completion of the initial stack test.

(E) Annual stack test results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test

runs, will be submitted by Autoliv to EPA and the State of Utah within 60 days of the completion of the annual test.

(vi) Combustion gas discharged to the atmosphere from the MRF meets the following limits:

(A) Dioxin emissions do not exceed 0.4 ng per dry standard cubic meter on a toxicity equivalent quotient (TEQ) basis corrected to 7% Oxygen.

(B) Combined lead and cadmium emissions do not exceed 240 ug per dry standard cubic meter corrected to 7% Oxygen.

(C) Combined arsenic, beryllium, and chromium emissions do not exceed 97 ug per dry standard cubic meter corrected to 7% Oxygen.

(D) Particulate matter emissions do not exceed 34 mg per dry standard cubic meter corrected to 7% Oxygen.

(E) If the limits specified in paragraphs (b) (18) (vi) (A) through (D) of this section are exceeded, Autoliv shall discontinue feeding gas generants to the MRF until such time as Autoliv can demonstrate to EPA and the state of Utah satisfaction that the MRF combustion gas emissions can meet the limits specified in paragraphs (b) (18) (vi) (A) through (D) of this section

(vii) No by-product gas generants or other pyrotechnic wastes generated off-site will be received at the Autoliv facility in Promontory, Utah or processed in the MRF unless otherwise allowed by law (permit or regulation).

(viii) Autoliv will provide EPA and the state of Utah with semi-annual reports (by January 30 and July 30 of each year).

(A) The semi-annual reports will document the amounts of by-product gas generants processed during the reporting period.

(B) The semi-annual reports will provide a summary of the MRF Operating Record during the reporting period, including information on by-product gas generant composition, average feed rates, upset conditions, and spills or releases.

(ix) No significant changes are made to the operating parameter production values of Autoliv's production of air bag gas generants such that any of the constituents listed in appendix VIII of this part are introduced into the process.

(x) Autoliv reports to the EPA any noncompliance which may endanger health or the environment orally within 24 hours from the time Autoliv becomes aware of the circumstances, including:

(A) Any information of a release, discharge, fire, or explosion from the MRF, which could threaten the environment or human health.

(B) The description of the occurrence and its cause shall include:

(1) Name, address, and telephone number of the facility;

- (2) Date, time, and type of incident;
- (3) Name and quantity of material(s) involved;
- (4) The extent of injuries, if any;
- (5) An assessment of actual or potential hazards to the environment and human health, and
- (6) Estimated quantity and disposition of recovered material that resulted from the incident.

(C) A written notice shall also be provided within five days of the time Autoliv becomes aware of the circumstances. The written notice shall contain a description of the non-compliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The EPA may waive the five day written notice requirement in favor of a written report within fifteen days.

(xi) Notifications and submissions made under paragraph (b)(18) of this section shall be sent to the Regional Assistant Administrator for the Office of Partnerships and Regulatory Assistance, U.S. EPA, Region 8 and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

40 CFR 261.20-.24

Sec. 261.20 General.

(a) A solid waste, as defined in Sec. 261.2, which is not excluded from regulation as a hazardous waste under Sec. 261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart.

[Comment: Sec. 262.11 of this chapter sets forth the generator's responsibility to determine whether his waste exhibits one or more of the characteristics identified in this subpart]

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable recordkeeping and reporting requirements under parts 262 through 265, 268, and 270 of this chapter.

(c) For purposes of this subpart, the Administrator will consider a sample obtained using any of the applicable sampling methods specified in appendix I to be a representative sample within the meaning of part 260 of this chapter.

Sec. 261.21 Characteristic of ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

- (1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60

[deg]C (140 [deg]F), as determined by a Pinsky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 (incorporated by reference, see Sec. 260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78 (incorporated by reference, see Sec. 260.11), or as determined by an equivalent test method approved by the Administrator under procedures set forth in Sec. 260.20 and 260.21.

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator under Sec. 260.20 and 260.21.

(4) It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Sec. 261.22 Characteristic of corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Sec. 260.11 of this chapter.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 [deg]C (130 [deg]F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Sec. 260.11 of this chapter.

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

Sec. 261.23 Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

Sec. 261.24 Toxicity characteristic.

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Sec. 260.11 of this chapter, the extract from a representative sample of the waste contains any of the contaminants listed in table 1 at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

Table 1--Maximum Concentration of Contaminants for the Toxicity Characteristic

EPA HW No. \1\	Contaminant	CAS No. \2\	Regulatory Level (mg/L)
D004	Arsenic.....	7440-38-2	5.0
D005	Barium.....	7440-39-3	100.0
D018	Benzene.....	71-43-2	0.5
D006	Cadmium.....	7440-43-9	1.0
D019	Carbon tetrachloride.....	56-23-5	0.5
D020	Chlordane.....	57-74-9	0.03
D021	Chlorobenzene.....	108-90-7	100.0

D022	Chloroform.....	67-66-3	6.0
D007	Chromium.....	7440-47-3	5.0
D023	o-Cresol.....	95-48-7	\4\ 200.0
D024	m-Cresol.....	108-39-4	\4\ 200.0
D025	p-Cresol.....	106-44-5	\4\ 200.0
D026	Cresol.....	\4\ 200.0
D016	2,4-D.....	94-75-7	10.0
D027	1,4-Dichlorobenzene.....	106-46-7	7.5
D028	1,2-Dichloroethane.....	107-06-2	0.5
D029	1,1-Dichloroethylene.....	75-35-4	0.7
D030	2,4-Dinitrotoluene.....	121-14-2	\3\ 0.13
D012	Endrin.....	72-20-8	0.02
D031	Heptachlor (and its epoxide).	76-44-8	0.008
D032	Hexachlorobenzene.....	118-74-1	\3\ 0.13
D033	Hexachlorobutadiene.....	87-68-3	0.5
D034	Hexachloroethane.....	67-72-1	3.0
D008	Lead.....	7439-92-1	5.0
D013	Lindane.....	58-89-9	0.4
D009	Mercury.....	7439-97-6	0.2
D014	Methoxychlor.....	72-43-5	10.0
D035	Methyl ethyl ketone.....	78-93-3	200.0
D036	Nitrobenzene.....	98-95-3	2.0
D037	Pentachlorophenol.....	87-86-5	100.0
D038	Pyridine.....	110-86-1	\3\ 5.0
D010	Selenium.....	7782-49-2	1.0
D011	Silver.....	7440-22-4	5.0
D039	Tetrachloroethyl ene.....	127-18-4	0.7
D015	Toxaphene.....	8001-35-2	0.5
D040	Trichloroethyl ene.....	79-01-6	0.5
D041	2,4,5-Trichlorophenol.....	95-95-4	400.0
D042	2,4,6-Trichlorophenol.....	88-06-2	2.0
D017	2,4,5-TP (Silvex).....	93-72-1	1.0
D043	Vinyl chloride.....	75-01-4	0.2

\1\ Hazardous waste number.

\2\ Chemical abstracts service number.

\3\ Quantitation limit is greater than the calculated regulatory level.

The quantitation limit therefore becomes the regulatory level.

\4\ If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

40 CFR 300.400 (g) (2) :

(g) Identification of applicable or relevant and appropriate requirements. (1) The lead and support agencies shall identify requirements applicable to the release or remedial action contemplated based upon an objective determination of whether the requirement specifically addresses a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site.

(2) If, based upon paragraph (g)(1) of this section, it is determined that a requirement is not applicable to a specific release, the requirement may still be relevant and appropriate to the

circumstances of the release. In evaluating relevance and appropriateness, the factors in paragraphs (g)(2)(i) through (viii) of this section shall be examined, where pertinent, to determine whether a requirement addresses problems or situations sufficiently similar to the circumstances of the release or remedial action contemplated, and whether the requirement is well-suited to the site, and therefore is both relevant and appropriate. The pertinence of each of the following factors will depend, in part, on whether a requirement addresses a chemical, location, or action. The following comparisons shall be made, where pertinent, to determine relevance and appropriateness:

- (i) The purpose of the requirement and the purpose of the CERCLA action;
- (ii) The medium regulated or affected by the requirement and the medium contaminated or affected at the CERCLA site;
- (iii) The substances regulated by the requirement and the substances found at the CERCLA site;
- (iv) The actions or activities regulated by the requirement and the remedial action contemplated at the CERCLA site;
- (v) Any variances, waivers, or exemptions of the requirement and their availability for the circumstances at the CERCLA site;
- (vi) The type of place regulated and the type of place affected by the release or CERCLA action;
- (vii) The type and size of structure or facility regulated and the type and size of structure or facility affected by the release or contemplated by the CERCLA action;
- (viii) Any consideration of use or potential use of affected resources in the requirement and the use or potential use of the affected resource at the CERCLA site.

40 CFR 302.4 Table

For the current table of hazardous substances listed at 40 CRR 302.4, go to <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi>.

40 CFR 300.515

Sec. 300.515 Requirements for state involvement in remedial and enforcement response.

(a) General. (1) States are encouraged to undertake actions authorized under subpart E. Section 104(d)(1) of CERCLA authorizes EPA to enter into cooperative agreements or contracts with a state, political subdivision, or a federally recognized Indian tribe to carry out Fund-financed response actions authorized under CERCLA, when EPA determines that the state, the political subdivision, or federally recognized Indian tribe has the capability to undertake such actions.

EPA will use a cooperative agreement to transfer funds to those entities to undertake Fund-financed response activities. The requirements for states, political subdivisions, or Indian tribes to receive funds as a lead or support agency for response are addressed at 40 CFR part 35, subpart O.

(b) Indian tribe involvement during response. To be afforded substantially the same treatment as states under section 104 of CERCLA, the governing body of the Indian tribe must:

- (1) Be federally recognized; and
- (2) Have a tribal governing body that is currently performing governmental functions to promote the health, safety, and welfare of the affected population or to protect the environment within a defined geographic area; and
- (3) Have jurisdiction over a site at which Fund-financed response, including pre-remedial activities, is contemplated.

...

(e) State involvement in selection of remedy. (1) Both EPA and the state shall be involved in preliminary discussions of the alternatives addressed in the FS prior to preparation of the proposed plan and ROD. At the conclusion of the RI/FS, the lead agency, in conjunction with the support agency, shall develop a proposed plan. The support agency shall have an opportunity to comment on the plan. The lead agency shall publish a notice of availability of the RI/FS report and a brief analysis of the proposed plan pursuant to Sec. 300.430(e) and (f). Included in the proposed plan shall be a statement that the lead and support agencies have reached agreement or, where this is not the case, a statement explaining the concerns of the support agency with the lead agency's proposed plan. The state may not publish a proposed plan that EPA has not approved. EPA may assume the lead from the state if agreement cannot be reached.

ST. CROIX HAZARDOUS MATERIAL RELEASE CONTINGENCY PLANNING

Sec. 100.01. Purpose. The purpose of this ordinance is to provide for contingency planning in the event of a release of hazardous substances on the Tribe's Reservation.

Sec. 100.02. Definitions.

(a) "Hazardous substance" means

(1) Listed hazardous substances. Any element or compound and listed by the United States E.P.A. in the table provided at 40 CFR 302.4.

(2) Unlisted hazardous substances. A solid waste which is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), if it exhibits any of the ignitability, corrosivity, reactivity, or toxicity characteristics identified in 40 CFR 261.20 through 261.24.

(3) Petroleum products. Petroleum, including crude oil or any fraction thereof; natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

(b) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes: Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, and the normal application of fertilizer. Release also means threat of release.

(c) "Reservation" means the reservation and other trust lands of the Tribe.

(d) "Tribe" means the St. Croix Chippewa Indians of Wisconsin.

Sec. 100.03. Contingency planning required.

(a) The Tribe's Environmental Protection Agency shall develop a Tribal Contingency Plan for the release of any hazardous substance on the Reservation, and shall review the Plan annually or more frequently as changed circumstances on the Reservation may require.

(b) The Tribal Contingency Plan shall include the following elements:

(1) Mitigation strategies to reduce or eliminate the chance of occurrence or consequences of a release.

(2) Preparedness for response to a release, including, planning, identification of resources, and training.

(3) Response strategies, including coordinated agency reaction.

(4) Recovery strategies, to provide for the short-term and long-term restoration of the environment to normal conditions.

(c) For so long as the Tribe is a party to a Memorandum of Understanding with the State of Wisconsin regarding the implementation of Title III of SARA, 42 U.S.C. §11001 et seq. the Tribe's plan shall be developed in concert with the Local Emergency Planning Committee or Committees (LEPC) of which is a part, and the Emergency Response Plan developed by the LEPC shall satisfy the requirements of this section.

Sec. 100.04. Emergency notification required.

(a) The owner or operator of a site at which a release occurs, and any other owner or person having possession of a hazardous substance which is the subject of a release, shall immediately notify the Tribe's emergency response coordinator of any release. If notification cannot be made to the Tribe's emergency response coordinator, then notice shall be given to the Tribe's police department and to the Sheriff of the County in which the release occurs.

(b) The notice required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

(1) The chemical name or identity of any substance involved in the release.

(2) An indication of whether the substance is an extremely hazardous substance as listed at 40 CFR 355.

(3) An estimate of the quantity of any such substance that was 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 emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release,

including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan).

(8) The names and telephone number of the person or persons to be contacted for further information.

(c) As soon as practicable after a release which requires notice under subsection (a), the person required to give notice shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to:

(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) Where appropriate, advice regarding medical attention necessary for exposed individuals.

Sec. 100.05. Hazardous and toxic chemical reporting required. The owner or operator of any facility required to report under the hazardous chemical reporting community right-to-know provisions of 40 CFR 370 or under the toxic chemical release reporting community right-to-know provisions of 40 CFR 372 shall comply with the requirements of such regulations and shall report as required to the Tribe's emergency response coordinator.

Sec. 100.06. Penalties. Any person or entity who violates any provision of sec. 100.04 or 100.05 may be assessed by the Tribal Court a civil forfeiture not to exceed \$5,000 per for each 24 hour period that a required report is not properly made. The Tribe's Tribal Court shall have jurisdiction over all alleged violations of sections 100.04 and 100.05. An action to recover a forfeiture as provided herein may be commenced by citation issued by a tribal conservation warden or police officer or by summons and complaint issued by the office of the tribal attorney.

Sec. 100.07. Effective date. This ordinance shall be effective 30 days from the date following its approval by the Tribal Council.