

## TITLE 6 REGULATORY PROVISIONS

### CHAPTER 6-1 INDUSTRIAL SAFETY AND HEALTH

#### 6-1-1 through 6-1-16 Reserved

#### 6-1-17 Purpose

The Colville Business Council finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest and for the welfare of the people of the Colville Indian Reservation and in order to assure, insofar as may reasonably be possible, safe, and healthful working conditions for every man and woman working on the Colville Indian Reservation, the Colville Business Council in the exercise of its police power, and in keeping with the mandates of Article V, Section 1(a) of the Tribal Constitution, declares its purpose by the provisions of this Chapter to create, maintain, continue, and enhance the industrial safety and health program of the Tribes, which program shall equal or exceed the standards prescribed by the Occupations Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).

#### 6-1-18 Definitions

For the purposes of this Chapter:

(a) "Director" means the Executive Director of the Confederated Tribes of the Colville Reservation, or a designated representative.

(b) "Department" means Colville Tribal Department of Industrial Health and Safety.

(c) "Employer" means any person, firm corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity on the Colville Indian Reservation who employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the Tribes, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

(d) "Employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person on the Colville Reservation who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this Chapter whether by way of manual labor or otherwise.

(e) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(f) "Safety and health standard" means a standard which requires the adoption or use of

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one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(g) "Work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

(h) For the purpose of computing time under this Chapter the term "working day" means a calendar day, except Saturdays, Sundays, and all tribal governmental legal holidays, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this Chapter, shall be computed by excluding the first working day and including the last working day.

(i) "Authorized Representative" means an employee, agent, or officer of the department.

(j) "Tribal Court" mean's the Colville Tribal Court.

(k) "Colville Tribal Safety Committee" shall mean a committee of not less than five persons nominated by the director and approved by the Colville Business Council to one (1) year terms.

**6-1-19 Application of Chapter—Fees and Charges**

This Chapter shall apply with respect to employment performed in any work place within the jurisdiction of the Confederated Tribes of the Colville Reservation. The department may provide by rule consistent with other tribal law for a schedule of fees and charges to be paid by each employer subject to this Chapter. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this Chapter.

**6-1-20 Rules and Regulations—Authority—Procedure**

The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this Chapter. At least thirty (30) days prior to such rule making, the director shall cause public notice of such hearing to be made in a newspaper of general circulation on the Reservation with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted. The director may present such rules at a public hearing where the director determines or is required by law to hold such a hearing and may utilize the Colville Tribal Administrative Procedure Act, where appropriate, to provide for notice and comment.

**6-1-21 Rules and Regulations—Guidelines—Standards**

In the adoption or rules and regulations under the authority of this Chapter, the director shall:

(a) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places; and

(b) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590); and

(c) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions; and

(d) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standard shall require, where appropriate, the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents; and

(e) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this Chapter; and

(f) Provide for the frequency, method, and manner of the making or inspections of work places without advance notice; and

(g) Provide for the publication and dissemination to employers and employees posting where appropriate by employers of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this Chapter; and

(h) Provide for the establishment of new, and the perfection and expansion of, existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this Chapter and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this Chapter; and

(i) Provide for the adoption of safety and health standards requiring the use of

safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings; and

(j) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection.

**6-1-22 Employers—General Safety Standard—Compliance**

Each employer:

(a) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: Provided, that no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and,

(b) Shall comply with the rules, regulations, and orders promulgated under this Chapter.

**6-1-23 Right of Entry—Inspections and Investigations—Subpoenas—Contempt**

The director, or any authorized representative, in carrying out his duties under this Chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or agent in charge, is authorized:

(a) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, work place, or environment where work is performed by an employee of an employer; and

(b) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable manner, any such work place and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee; and

(c) In making inspections and making investigations under this Chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the Tribal Courts. In the case of failure or refusal of any person to obey such an order the Tribal Court shall have jurisdiction to issue to such person an order requiring

such person to appear to produce evidence when so ordered, and to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the Court may be punished by said Tribal Court as a contempt thereof.

**6-1-24 Variations From Safety and Health Standards—Temporary Order—Application Contents—Procedure**

(a) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this Chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection two of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he is taking all available steps to safeguard his employees against the hazards covered by the safety and health standard and he has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such employee. The director may issue an interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety (90) days prior to the expiration date of the order. No renewal or a temporary order may remain in effect for longer than one hundred eighty (180) days.

(b) An application for a temporary order under this section shall contain:

- (1) A specification of the safety and health standard or portion thereof from which the employer seeks severance;
- (2) A representation by the employer, supported by proof from qualified persons having first hand knowledge of the facts as represented, that he is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor.
- (3) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(4) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he has taken and will take, with dates specified, to come into compliance with the standard; and

(5) A certification that the employer by the date of mailing or delivery of the application to the director, has informed his employees of the application by providing a copy thereof to his employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance.

**6-1-25 Variations From Safety and Health Standards—Notice—Hearing—Order-Modification or Revocation**

Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this Chapter. Affected employees shall be given notice of each such application and in the manner prescribed by section 6-1-24 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he determines or decides after a hearing has been held, if request for hearing has been made, the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time after six (6) months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this Chapter.

**6-1-26 Inspections—Employer and Employee Representatives**

A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or an authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section.

**6-1-27 Compliance by Employees—Violations—Notice—Review**

Each employee shall comply with the provisions of this Chapter and all rules, regulations, and orders issued pursuant to the authority of this Chapter which are applicable to his own actions and conduct in the course of his employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this Chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his authorized representative of such violation or danger.

Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this Chapter.

If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employer and the employee or representative of employees in writing of such determination. Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this Chapter which he has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case.

**6-1-28 Violations—Citations**

If upon inspection or investigation the director or an authorized representative believes that an employer has violated a requirement of section 6-1-22, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this Chapter, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions, or the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall, fix reasonable time for the abatement of the violation. The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

Each citation, or a copy or copies thereof, issued under the authority of this section and section 6-1-29 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices. No citation may be issued under this section or section 6-1-29 after the expiration of six (6) months following a compliance inspection, investigation, or survey revealing any such violation.

**6-1-29 Violations—Dangerous Conditions—Citations and Order of Immediate Restraint—Restraints—Restraining Orders**

(a) If upon inspection or investigation, the director, or an authorized representative, believes that an employer has violated a requirement of section 6-1-22, or any safety or health standard promulgated by rules or the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or an authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of section 6-1-22 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or an authorized representative.

(b) Whenever the director, or an authorized representative, concludes that a condition of employment described in subsection one of this section exists in any work place, he shall promptly inform the affected employees and employers of the danger.

(c) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection one of this section is issued by the director, or his authorized representative, he may in addition request the tribal prosecutor to make an application to the Tribal Court for a temporary restraining order or such other relief as appears to be appropriate under the circumstances.



**6-1-30 Appeal to Committee—Citation or Notification of Assessment of Penalty—Final Order—Procedure—Redetermination—Hearing**

(a) If after an inspection or investigation the director or an authorized representative issues a citation under the authority of sections 6-1-28 or 6-1-29, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of section 6-1-34 and shall state that the employer has fifteen (15) working days within which to notify the director that he wishes to appeal the citation or assessment or penalty. If, within fifteen (15) working days from the communication of the notice issued by the director the employer fails to notify the director that he intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection three of this section the citation and the assessment shall be deemed a final order of the department and not subject to review by any Court or agency.

(b) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance or penalties, the director shall notify the employer by certified mail of such failure to correct the violation and or the penalty to be assessed under section 6-1-34 by reason of such failure, and shall state that the employer has fifteen (15) working days from the communication of such notification and assessment of penalty to notify the director that he wishes to appeal the director's notification of the assessment of penalty. If, within fifteen (15) working days from the receipt of notification issued by the director the employer fails to notify the director that he intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any Court or agency.

(c) Any employer or person may appeal an adverse action by the director within fifteen (15) working days of the decision. Such an appeal will be heard through the procedures in the Colville Administration Procedures Act, 2-4-1, relating to contested case proceedings.

(Amended July 2009, Resolution 2009-518)

**6-1-32 Discrimination Against Employee Filing Complaint, Instituting Proceedings or Testifying Prohibited—Procedure—Remedy**

(a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Chapter.

(b) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) days after such

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violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause an investigation to be made. If upon such investigation, the director determines that the provisions of the section have been violated, an action shall be brought in the Tribal Court against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action in the Colville Tribal Court on his own behalf within thirty (30) days of such determination. In any such action the Tribal Court shall have jurisdiction, for cause shown, to restrain violations of subsection (a) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(c) Within ninety (90) days of the receipt of the complaint filed under this section, the director shall notify the complainant of a determination under subsection (b) of this section.

**6-1-33 Injunctions—Temporary Restraining Orders**

(a) In addition to and after having invoked the powers of restraint vested in the director as provided in section 6-1-29 the Tribal Court shall have jurisdiction, upon petition of the director through the tribal prosecutor, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the Tribal Court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this Chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five (5) working days.

(c) Whenever and as soon as any authorized representative or the director concludes that a condition or practice described in subsection one exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(d) If the director arbitrarily or capriciously fails to invoke his restraining authority under section 6-1-29 or fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may

bring an action against the director in the Tribal Court for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under section 6-1-29.

**6-1-34 Violations—Civil Penalties**

(a) Any employer who willfully or repeatedly violates the requirements of section 6-1-22, on any safety or health standard promulgated under the authority of this Chapter, on any, existing rule or regulation governing the conditions of employment promulgated by the department, or on any order issued granting a variance under sections 6-1-24 or 6-1-25 may be assessed a civil penalty not to exceed fifty thousand dollars (\$50,000) for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 6-1-22, on any safety or health standard promulgated under the authority of this Chapter, on any existing rule or regulation governing the conditions of employment promulgated by the department, or on any order issued granting a variance under sections 6-1-24 or 6-1-25 as determined in accordance with subsection six of this section, shall be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 6-1-22, any safety or health standard promulgated under this Chapter, any existing rule or regulation governing the conditions of employment promulgated by the department, or any order issued granting a variance under sections 6-1-24 or 6-1-25, where such violation is specifically determined not to be of a serious nature as provided in subsection six of this section, may be assessed a civil penalty not to exceed three thousand dollars (\$3,000) for each such violation, unless such violation is determined to be de minimis.

(d) Any employer who fails to correct a violation for which a citation has been issued under sections 6-1-28 or 6-1-29 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the Safety Committee in case or any review proceedings under this Chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each day during which such failure or violation continues.

(e) Any employer who violates any of the posting requirements of this Chapter, or any of the posting requirements of rules promulgated by the department pursuant to this Chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in sections 6-1-24, 6-1-25, 6-1-28, 6-1-29, 6-1-38(a) and 6-1-39(b), shall be assessed a penalty not to exceed three thousand dollars (\$3,000) for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of section 6-1-21, may be assessed a penalty not to

exceed one thousand five hundred dollars (\$1,500) for each such violation.

(Typographical error corrected 4/22/05)

(f) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(g) The director, or an authorized representative of the director, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(h) Civil penalties imposed under this Chapter shall be paid to the director for deposit in the Tribal General Fund. Civil penalties may be recovered in a civil action in the name of the department brought in the Tribal Court.

#### **6-1-35 Violations—Criminal Penalties**

(a) Any person within the jurisdiction of the Tribes, who gives advance notice of any inspection to be conducted under the authority of this Chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six (6) months, or by both.

(b) Whoever, within the jurisdiction of the Tribes, knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Chapter shall, upon conviction be guilty of an offense and be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment for not more than six (6) months or by both.

(c) Any employer, within the jurisdiction of the Tribes, who willfully and knowingly violates the requirements of section 6-1-22, any safety or health standard promulgated under this Chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under sections 6-1-24 or 6-1-25 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than one (1) year or by both.

(d) Any employer, within the jurisdiction of the Tribes, who has been issued an order immediately restraining a condition, practice, method, process, or means in the work place, pursuant to sections 6-1-29 or 6-1-33, and who nevertheless continues to use a

machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of an offense and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six (6) months, or by both.

(e) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the tribal prosecutor, and the tribal prosecutor shall in writing advise the director of the disposition he shall make of the alleged violation.

**6-1-36 Confidentiality—Trade Secrets**

All information reported to or otherwise obtained by the director, or an authorized representative, in connection with any inspection or proceeding under the authority of this Chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this Chapter, or when relevant in any proceeding under this Chapter. In any such proceeding the director, or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

**6-1-37 Reserved**

**6-1-38 Records—Reports—Notice to Employee Exposed to Harmful Materials**

(a) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this Chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this Chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspection. The director shall also issue, regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this Chapter, including the provisions of applicable safety and health standards.

(b) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such

records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents, in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this Chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

**6-1-39 Compliance with Federal Act—Agreements and Acceptance of Grants**  
**Authorized**

The director is authorized to adopt by rule any provision reasonably necessary to enable this Tribe to qualify as a tribal plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this Tribe to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this reservation subject to the legislative jurisdiction of the Tribe. The director is authorized to enter into agreement with the United States and to accept on behalf of the Tribe grants of funds to implement the development and enforcement of this Chapter and the Occupational Safety and Health Act of 1970, as amended.

**6-1-40 Safety and Health Standards**

(a) The director in the promulgation of rules under the authority of this Chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this Chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(b) Any safety and health standard adopted by rule of the director, shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies or government, and at the request of the employee to his physician.

(c) Whenever the director adopts by rule any safety and health standard the director may at the same time provide by rule the effective date of such standard which shall not be less than thirty (30) days, excepting emergency rules, but may be made effective at such time in excess of thirty (30) days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty (30) days after adoption, having a delayed effectiveness in excess of thirty (30) days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule.

**6-1-41 Reserved**

**6-1-42 Statistics—Investigations—Reports**

In furtherance of the objects and purposes of this Chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this Chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this Chapter, or any safety and health standard, rule, or order promulgated pursuant to this Chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the Tribal Court after notice to the director and an opportunity for hearing: Provided, that such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured worker or the injured workers' legal representative or labor organization representative, or to the legal representative or labor organization representative of a deceased worker who was the subject of an investigation, or to the employer of the injured or deceased worker or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

**6-1-43 through 6-1-105 Reserved**

**6-1-106 Short Title**

This act shall be known and cited as the Colville Tribal Industrial Safety and Health Chapter.

**6-1-107 Severability**

If any provision of this Chapter, or its application to any person or circumstance is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected.

(Chapter 6-1 Adopted 12/21/87, Resolution 1987-725)  
(Certified 10/12/88)