

**Title 22 – Protection of the Environment**

**Chapter 2. Underground Injection Control**

**Sections:**

Sec. 201. Purposes. .... 1
Sec. 202. Administration..... 2
Sec. 203. Regulations, Criteria, and Standards..... 2
Sec. 204. Definitions..... 2
Sec. 205. Application..... 3
Sec. 210. Introduction..... 3
Sec. 211. Requirements..... 4
Sec. 220. Introduction..... 4
Sec. 221. Requirements..... 4
Sec. 230. Introduction..... 5
Sec. 231. Requirements..... 5
Sec. 240. Introduction..... 6
Sec. 241. Requirements..... 6
Sec. 242. Additional Requirements..... 6
Sec. 250. Requirements for compliance evaluation programs..... 6
Sec. 251. Administrative enforcement..... 6
Sec. 252. Administrative penalties..... 7
Sec. 253. Civil Penalties..... 8
Sec. 254. Criminal violations..... 8
Sec. 255. Judicial relief..... 8
Sec. 256. Public Participation in OEP Enforcement Process..... 9
Sec. 260. Judicial review..... 9
Sec. 270. Public hearings..... 9
Sec. 280. Savings..... 10
Sec. 281. Effective Date..... 10

**Subchapter 1. General Provisions**

**Sec. 201. Purposes.**

The purposes of this Title are:

- (a) To protect the quality of the underground sources of drinking water of the Fort Peck Reservation, so as to protect and enhance human health, welfare and safety;
(b) To regulate the underground injection of fluids into Class 2 wells and prohibit the underground injection of fluids into Class 1, 3 and 4 wells;

(c) To provide for the Fort Peck Tribes' Office of Environmental Protection (OEP) to assume primary enforcement responsibility for that portion of the Underground Injection Control program administered by the U.S. Environmental Protection Agency (EPA), pertaining to Class 2 wells;

(d) To prohibit any underground injection activity within the external boundaries of the Reservation that may endanger underground sources of drinking water, irrespective of whether such activity is prohibited by any other provision of this Title. Underground injection endangers underground drinking water if the injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system and if the presence of the contaminant may result in noncompliance with any national or tribal primary drinking water regulation or otherwise adversely affect the health of persons;

(e) To authorize the OEP to take action to protect the health of persons when a contaminant which is present in or may enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons;

(f) To authorize the Fort Peck Tribes' OEP to promulgate regulations for such recordkeeping, reporting, monitoring and operating requirements as may reasonably be required to implement this Title, and a right of entry and inspection to determine compliance with this Title, including for this purpose, inspection, at a reasonable time, of records, files, papers, processes, controls, and facilities; and

(g) To authorize the OEP to identify and protect those aquifers or parts of aquifers on the Reservation which qualify as underground sources of drinking water, and to exempt those it determines do not currently serve as a source of drinking water and will not in the future serve as a source of drinking water.

### **Sec. 202. Administration.**

(a) The OEP shall administer and enforce this Title and any applicable regulations, as well as any orders or permits issued pursuant to this Title.

(b) The OEP shall adopt a schedule of permit application fees and other fees related to underground injection on the Reservation. To the extent feasible, fees shall cover all costs associated with the processing of applications for permits or variances.

(c) The OEP may accept and administer grants from the federal government and other sources. Funding to implement or enforce this Title or for purposes relating to groundwater quality, including appropriated tribal funds, funds collected under this Title, and grant or contract funds from the United States or other entities, shall be deposited in a tribal account earmarked as the underground injection control account.

(d) The OEP is authorized to issue permits allowing injection in Class 2 wells under any conditions the OEP determines necessary or appropriate to protect underground sources of drinking water. Unless OEP otherwise notifies the owner or operator of any Class 2 well, any permit that EPA has issued for that well will be considered a permit issued pursuant to this Title and may be enforced as if issued by the OEP.

### **Sec. 203. Regulations, Criteria, and Standards.**

(a) The provisions of the EPA program regulations for protecting underground drinking water sources adopted by the United States are adopted as provided and/or modified in this Title and incorporated into the Fort Peck Comprehensive Code of Justice. The regulations at Title 40 of the Code of Federal Regulations so incorporated include the Sections of Parts 124, 144, and 146 which apply to the regulation of Class 2 (Oil and Gas related) injection wells. In any provision incorporated herein, a reference to the "State" shall mean the Fort Peck OEP, and a reference to the "Director" shall mean the Director of the Fort Peck OEP, unless expressly provided otherwise or unless EPA has specifically retained authority

over certain activities. If EPA has retained authority, any reference to "Director" shall mean the Regional Administrator of EPA, or his or her authorized representative, as provided in 40 CFR 144.3 and 146.3. All regulations shall be incorporated in the form promulgated by the United States on the effective date of this Title.

(b) The OEP, with the concurrence of the Executive Board, may adopt such other regulations as it deems necessary to implement this code, so long as they are at least as stringent as federal requirements.

(c) Where there is a conflict between provisions of federal and tribal regulations, the tribal provisions shall prevail, so long as the tribal provisions are at least as stringent as the federal provisions.

### **Sec. 204. Definitions.**

(a) "Class 1 wells" are injection wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore. They are also other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.

(b) "Class 2 wells" are wells which inject fluids:

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) "Class 3 wells" are wells which inject for extracting minerals, including

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals; this category includes only in situ production from ore bodies which have not been conventionally mined.

(3) Solution mining of salts or potash.

(d) "Class 4 wells" are injection wells

(1) Used by generators of hazardous or radioactive waste, or by owners or operators of hazardous waste management facilities or radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which contains an underground source of drinking water within one quarter mile of the well.

(2) Used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(3) used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under paragraph (a) or (d)(1) and (2) of this section (e.g. wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 502 of this Code.)

(e) "Class 5 Wells" are wells not included in Classes 1, 2, 3 and 4.

(f) "Director" means the Director of the Fort Peck Office of Environmental Protection.

(g) "EPA" means the United States Environmental Protection Agency.

(h) "Executive Board" means the Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(i) "Indian" means any individual who

(a) Is an enrolled member of the Assiniboine or Sioux Tribes of the Fort Peck Reservation;

(b) Holds, or is recognized by the Secretary of the Interior as eligible to hold, trust or restricted property on the Fort Peck Indian Reservation; or

(c) Is a member of or is eligible for membership in a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) "New injection well" means an injection well that begins injection after the effective date of this Title.

(k) "Non-Indian" means any individual not an Indian.

(l) "OEP" means the Fort Peck Office of Environmental Protection.

(m) "Person" means an individual, association, partnership, corporation, municipality, State, Federal or Tribal agency, or an agency or employee thereof or its portion.

(n) "Reservation" means the Fort Peck Indian Reservation as established in the Agreement of December 28 and December 31, 1886 and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(o) Additional terms not defined in this Section but defined in 40 CFR Sections 124.2, 144.3, 144.6, 146.3 and 146.5 are hereby adopted and incorporated.

## **Sec. 205. Application.**

This Title shall apply throughout the Fort Peck Indian Reservation to all persons who own or operate Class 2 injection wells.

## **Subchapter 2. General Underground Injection Control Program Requirements.**

### **Sec. 210. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter prohibit any person from performing any underground injection activity within the Reservation boundaries except as authorized by a permit issued by the OEP. In addition, this Chapter prohibits construction of a new injection well or the conversion of any production well to an injection well before a permit is obtained. This Chapter requires the OEP to identify and protect all aquifers or parts of aquifers on the Reservation as underground sources of drinking water, and determine exempted aquifers or parts of aquifers. Under this Chapter, Class

3 and 4 injection wells are prohibited within the Reservation's boundaries. This Chapter also incorporates federal requirements on reporting by the OEP and authorization for waivers granted by the Director.

### **Sec. 211. Requirements.**

(a) Any underground injection into a Class 1, 3 or 4 well is prohibited. Any underground injection into a Class 2 well, except as authorized by permit issued pursuant to this Title, is prohibited. The construction of any well required to have a permit or the conversion of any production well to an injection well is prohibited until a permit has been issued.

(b) The following sections of 40 CFR, are hereby adopted and incorporated, except as provided in this Title:

(1) Purpose and scope at 40 CFR 144.1(g)(1)(ii) and 144.1(g)(2)(iv and v),

(2) Confidentiality of information at 40 CFR 144.5,

(3) Classification of wells at 40 CFR 144.6,

(4) Identification of underground sources of drinking water and exempted aquifers at 40 CFR 144.7(a), (b), and (c)(2),

(5) Noncompliance and program reporting by the Director at 40 CFR 144.8,

(6) Prohibition of the movement of fluid into underground sources of drinking water for Class 2 wells at 40 CFR 144.12 (a), (b), and (e), and

(7) Waiver of requirement by the Director at 40 CFR 144.16.

(c) Subpart C of 40 CFR 144 is not adopted and there shall be no authorization by rule. Any provisions regarding authorization by rule in any provisions of 40 CFR which are adopted and incorporated by this Title, shall have no effect.

### **Subchapter 3. Underground Injection Control Permit Requirements.**

#### **Sec. 220. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter require permits for all injection wells and before construction begins on new injection wells. This

Chapter incorporates federal requirements applicable to permits for Class 2 wells, and provides that permit applications are available from the OEP. In addition, the OEP is responsible for establishing permit terms and conditions, conducting public participation activities, verifying financial responsibility for closure, terminating or modifying permits, and approving the transfer of permits. The OEP shall also be authorized to require corrective action if any information indicates movement or the potential for movement of injection or formation fluids into underground sources of drinking water.

### **Sec. 221. Requirements.**

(a) All Class 2 underground injection wells are prohibited unless authorized by permit. Regulations concerning applications for permits, as provided in 40 CFR 144.31 (a), (b), (c)(2), (d), (e)(1-8 and 10), and (f), are adopted and incorporated, except that the Director shall also require each application to include a surety bond to demonstrate financial responsibility, a list of the owners of surface and mineral rights and the owners and operators of other injection wells within a ¼ mile radius, and, if the application is for conversion of an existing production well to an injection well, a cement bond log test to demonstrate proper well construction.

(b) The following Sections of 40 CFR, are hereby adopted and incorporated, except as provided in this Title:

(1) Signatories to permit applications and reports at 40 CFR 144.32.

(2) Area permits at 40 CFR 144.33.

(3) Emergency permits at 40 CFR 144.34;

(4) Effect of a permit at 40 CFR 144.35.

(5) Duration of permits at 40 CFR 144.36.

(6) Continuation of expiring permits at 40 CFR 144.37(d). The Director may continue either EPA or OEP-issued permits until the effective date of the new permits.

(7) Transfer of permits at 40 CFR 144.38, except that no permit may be transferred without the Director's express approval and the new permittee has obtained a surety bond to satisfy the financial responsibility requirements.

(8) Conditions applicable to all permits at 40 CFR 144.51. Any reference to EPA in subsections (o) and (p) shall mean the OEP and any reference to the Regional Administrator shall mean the Director. In addition to the requirements of 40 CFR 144.51, the Director shall also require owners or operators to perform a cement bond log as an express permit condition.

(9) Establishing permit conditions at 40 CFR 144.52. Any reference to the EPA therein shall mean the OEP, and any reference to the Regional Administrator shall mean the Director of the OEP.

(10) Schedule of compliance at 40 CFR 144.53.

(11) Requirements for recording and reporting of monitoring results at 40 CFR 144.54, with monitoring to be at least as frequent as required by 40 CFR 146.23(b). In addition, the monitoring of injected fluids required by 40 CFR 146.23(b)(1) shall be conducted at least every year or whenever the source(s) of injected fluids changes or the owner/operator has reason to believe that the quality or content of the injected fluids may change or may have changed, whichever is more frequent. Each observation required under 40 CFR 146.23(b)(2) shall be recorded. For produced fluid operations, there shall be a daily record of the volume disposed, hours in service, maximum pressure, average operating pressure and tubing/casing annulus pressure.

(12) Corrective action at 40 CFR 144.55 (a), (b)(1-3), and

(13) Corrective action at 40 CFR 146.7.

(14) The OEP must be notified at least 24 hours before any corrective action work is begun.

#### **Subchapter 4. UIC Permitting Procedures.**

##### **Sec. 230. Introduction.**

The provisions of federal regulations incorporated into tribal law under this Chapter specify tribal procedures for processing permit applications and permit modifications, revocations and terminations. This Chapter also incorporates federal requirements for public notice and participation.

##### **Sec. 231. Requirements.**

The following Sections of 40 CFR are hereby adopted and incorporated, except as provided in this Title and except for the provisions related to the Resource Conservation and Recovery Act, Section 404 of the Clean Water Act, and the National Pollutant Discharge Elimination System, which are not adopted and shall have no effect. Any reference to EPA or the Regional Office therein shall mean the OEP and any reference to the Regional Administrator shall mean the Director of the OEP, unless expressly provided otherwise:

(a) Criteria for establishing permitting priorities at 40 CFR 146.9;

(b) Application for a permit at 40 CFR 124.3(a);

(c) Modification or revocation and reissuance of permits at 40 CFR 144.39;

(d) Termination of permits at 40 CFR 144.40;

(e) Minor modifications of permits at 40 CFR 144.41;

(f) Modification, revocation and reissuance or termination of permits at 40 CFR 124.5;

(g) Draft permits at 40 CFR 124.6;

(h) Statement of basis at 40 CFR 124.7;

(i) Fact sheet at 40 CFR 124.8;

(j) Public notice of permit actions and public comment period at 40 CFR 124.10, except that the applicant shall also mail a copy of a notice to all the owners of surface and mineral rights and owners and operators of other injection wells within a 1/4 mile radius of the well(s) subject to pending permit actions, as identified by the applicant under Section 302(a);

(k) Public comments and requests for public hearings at 40 CFR 124.11;

(l) Public hearings at 40 CFR 124.12;

(m) Obligation to raise issues and provide information during public comment period at 40 CFR 124.13;

(n) Information to be considered by the Director at 40 CFR 146.24;

(o) Reopening public comment period at 40 CFR 124.14;

(p) Issuance and effective date of permit at 40 CFR 124.15;

- (q) Response to comments at 40 CFR 124.17;
- (r) Administrative record for a final permit at 40 CFR 124.18; and
- (s) Computation of time at 40 CFR 124.

## **Subchapter 5. UIC Technical Criteria and Standard.**

### **Sec. 240. Introduction.**

The provisions of federal regulations incorporated into tribal law in this Chapter require compliance with technical criteria and standards to ensure proper construction, operating, monitoring and testing of Class 2 Underground Injection Wells. The Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation finds that no Class 1 and 3 wells exist on the Reservation on the effective date of this code, and Class 1, 3, and 4 wells are prohibited by this code.

### **Sec. 241. Requirements.**

The following Sections of 40 CFR Part 146 are hereby adopted and incorporated, except as provided in this Title:

- (a) Criteria for exempted aquifers at 40 CFR 146.4;
- (b) Area of review at 40 CFR 146.6;
- (c) Mechanical Integrity at 40 CFR 146.8;
- (d) Plugging and abandoning Class 1- 3 wells at 40 CFR 146.10 (a), (b), and (c), except that the provisions concerning Class 1 and 3 wells shall not apply;
- (e) Construction requirements at 40 CFR 146.22; and
- (f) Operating, monitoring and reporting requirements at 40 CFR 146.23.

### **Sec. 242. Additional Requirements.**

- (a) All wells must maintain a pressure gauge, as approved by the OEP, on the tubing and annulus for instantaneous monitoring purposes.
- (b) All operators must provide the OEP with at least 24 hours notification of any workover or when any well loses integrity.
- (c) The OEP shall inspect any temporarily abandoned well at least annually. Owners and operators of temporarily abandoned wells must

demonstrate to the Director's satisfaction that the well will not endanger an underground source of drinking water during the period of abandonment. This shall include compliance with the requirements applicable to active wells, unless the Director waives the requirements. The owner or operator of the temporarily abandoned well shall obtain written approval from the Director prior to resuming injection. A "temporarily abandoned well" is defined as any well in which no fluid has been placed for at least three consecutive months.

(d) Injection may not begin in any well unless the OEP has received results of a cement bond log test for that well and notified the permittee for that well that the test results are satisfactory.

## **Subchapter 6. Enforcement**

### **Sec. 250. Requirements for compliance evaluation programs.**

Requirements for compliance evaluation programs at 40 CFR 145.12 are hereby adopted and incorporated and the Director shall be authorized to conduct all activities therein.

### **Sec. 251. Administrative enforcement.**

(a) Whenever the OEP finds that any person who is subject to a requirement of the Fort Peck Underground Injection Control program is violating the requirement, the OEP may serve written notice of violation on the person or the person's agent. The notice must specify the permit condition, standard, regulation or provision of this Title violated, and the facts which constitute the violation, measures which are reasonably necessary to correct the violation, and the time within which such measures are to be completed. The notice must be signed by the Director and served on the person or the person's agent in person by a member of the OEP or sent by certified mail. Service by mail is complete on the day of mailing.

(b) Whenever the OEP finds that any person who is subject to a requirement of the Fort Peck Underground Injection Control program is violating the requirement, the OEP may issue an order assessing an administrative penalty, or requiring compliance, or both.

(c) Before issuing an order under this Section, the OEP shall serve written notice of the proposed order on the alleged violator or the violator's agents and provide an opportunity for a hearing. The notice must include a copy of the proposed order and must be signed by the Director and served on the person or the person's agent in person by a member of the OEP or sent by certified mail. Service by mail is complete on the day of mailing. The notice of the proposed order must state:

- (1) The provision alleged to be violated;
- (2) The facts alleged to constitute the violation;
- (3) The amount of the administrative penalty assessed under this Section, if any;
- (4) The amount, if any, of the penalty to be suspended upon specified conditions;
- (5) The nature of any corrective action the OEP requires;
- (6) As applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;
- (7) The right to a hearing;
- (8) That a formal hearing may be waived and an informal conference conducted instead; and
- (9) The right to appeal a final administrative order within 30 days of the final order, as provided in Section 701 of this Title.

(d) The OEP shall provide each person served written notice of a proposed order an opportunity for a hearing, if requested within 30 days of receiving notice. The request must specify the factual and legal issues in dispute and the factual and legal grounds for the defense. At the hearing, the person may contest the alleged violation, and/or the appropriateness of the proposed penalty or corrective action. The OEP will notify the person of the time, date and place of the hearing. Public notice shall be given and the hearing shall be conducted as provided in Section 801 of this Title.

(e) The Director shall issue a final administrative order following final judgement or if a person has been served written notice of a proposed or-

der and takes no action. The order shall be effective in 30 days unless appealed, pursuant to Section 701 of this Title.

(f) Instead of assessing administrative penalties under this Section and Sec. 603. Administrative Penalties, the OEP may initiate action under Sec. 604. Civil Penalties. In addition to or instead of issuing an order under this Section, the OEP may take any of the following actions:

(1) require the alleged violator to appear before the OEP by subpoena for a hearing at a specified time and place to answer the charges or to provide information regarding the violation or its impact on public health and welfare or the environment; or

(2) initiate action under Sec. 605. Criminal Penalties and/or Sec. 606. Judicial Relief.

(g) In the case of disobedience of any subpoena issued and served under this Section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the OEP, the OEP may apply to the Tribal Court for an order to compel compliance with the subpoena or the giving of testimony. The Court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the Court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in the Tribal Court.

(h) This section does not prevent the OEP from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

#### **Sec. 252. Administrative penalties.**

(a) Administrative penalties shall be at least \$1,000 but not more than \$5,000 per day of violation. Maximum penalties shall be \$125,000 for all violations. This limitation on administrative penalties applies only to penalties assessed under this Section. The OEP may suspend such portion of the administrative penalty assessed under this

Section, as provided in subsection (b). Assessment of an administrative penalty under this Section may be made in conjunction with any order or other administrative action authorized by this Title.

(b) In determining appropriate penalties for violations, the OEP shall consider (1) the seriousness of the violation; (2) the economic benefit (if any) to the violator resulting from the violation; (3) any history of such violations; (4) any good-faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the OEP shall consider the cooperation and the degree of care exercised by the person assessed the penalty, and how expeditiously the violation was corrected, as well as the preceding six factors in this subsection.

(c) If the OEP is unable to collect an administrative penalty assessed under this Section or if a person fails to pay all or any portion of an administrative penalty assessed under this Section, the OEP may take action in the Tribal Court to recover the penalty amount and any additional amounts assessed or sought under this Title.

(d) Administrative penalties collected under this Section must be deposited in the tribal treasury.

#### **Sec. 253. Civil Penalties.**

(a) Failure to timely comply with any program requirement including any permit condition, regulation or order related to a Class 2 well, shall subject the violator to civil penalties of at least \$1,000 but not more than \$25,000 per day. The maximum civil penalty shall be assessable for each instance of violation and if the violation is continuous, shall be assessable up to the maximum for each day of violation.

(b) Failure by a non-Indian to timely comply with a notice of violation or any order of the OEP shall subject the violator to suspension or revocation of the privilege of doing business on the Reservation for a period set by OEP.

(c) Tribal courts shall have jurisdiction over actions by OEP under this Section pursuant to Title 1 (Courts), Section 109 of the Comprehensive Code of Justice.

(d) A civil penalty shall be appropriate to the violation.

#### **Sec. 254. Criminal violations.**

(a) Any Indian person who willfully violates any provisions of this Title or its regulations, or permit or OEP notice or order is guilty of a Class A Misdemeanor. Each day of violation constitutes a separate violation.

(b) If the OEP finds that any violation of program requirements by a non-Indian was willful, the OEP may refer the matter to the EPA for enforcement in a timely manner.

(c) Action under this Section does not bar enforcement of this Title, rules adopted under it, orders or terms of a permit by injunction or other appropriate remedy.

#### **Sec. 255. Judicial relief.**

(a) The OEP may file suit in the name of the Tribes in Tribal Court pursuant to Title 1 (Courts), Section 109 of the Comprehensive Code of Justice, or any other court with jurisdiction to:

(1) Collect civil or administrative penalties;

(2) Immediately restrain any person from engaging in any unauthorized activity which is endangering or may endanger or causing or may cause damage to public health or environment;

(3) Enjoin any person from threatened or continuing violation of any provision of this Title or regulation adopted hereunder, including permit conditions;

(4) Order compliance with any provision of this Title or regulation adopted hereunder, including permit conditions and OEP orders; or

(5) Order the closure of a well.

It shall not be necessary for the OEP to revoke the permit before seeking a court order.

(b) The burden of proof and degree of knowledge or intent required to establish violations in any proceeding shall be no greater than



the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

(c) In any such suit, if judgment is rendered for the Tribes, the Court shall award the Tribes court costs and reasonable attorney fees, and may award the costs of investigation, inspection or monitoring surveys which led to establishing the violations.

### **Sec. 256. Public Participation in OEP Enforcement Process.**

(a) The OEP shall investigate and respond in writing to all citizen complaints submitted pursuant to Sec. 601.

(b) The OEP shall not oppose intervention by any citizen when such intervention is authorized by a federal statute, rule or regulation.

(c) The OEP shall publish and provide at least 30 days for public comment on any proposed settlement of an OEP enforcement action. Notice shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

### **Subchapter 7. Appeals**

#### **Sec. 260. Judicial review.**

(a) Any party aggrieved by any final decision of the OEP may appeal to Fort Peck Court of Appeals pursuant to Section 113 and Section 202 of the Comprehensive Code of Justice.

(b) Copies of the appeal shall be served on the Tribal Chairman and the OEP. Upon receipt of the complaint the OEP shall certify to the court the entire record of the proceedings, including all testimony and evidence taken before the OEP.

(c) The Court shall decide the case upon the record certified. The decision of the OEP shall be affirmed unless it is in excess of its authority, arbitrary and capricious or not supported by substantial evidence.

### **Subchapter 8. Public Hearings**

#### **Sec. 270. Public hearings.**

(a) The provisions of this Chapter shall apply to all hearings conducted by the OEP, unless otherwise provided in 40 CFR 124.10 or 124.12 regarding permit actions. Those provisions shall apply in case of any conflict with the provisions of this Chapter.

(b) The OEP shall schedule a hearing as soon as practicable after receiving a request for a hearing pursuant to the code, and notify the person requesting the hearing. Notice of the hearing shall be posted prior to the hearing in a prominent public place and published at least once in a local newspaper on the Reservation.

(c) The OEP shall compile the administrative record to that date and provide any party the right to examine the record prior to the hearing. The aggrieved party and any interested party shall have the right to respond to the record prior to the hearing. Thereafter, the Director shall maintain the administrative record and shall include all evidence, written statements, correspondence, hearing record and any other relevant matter. Hearings proceedings shall be recorded.

(d) The Director of the OEP shall preside over any hearing held under this code. The aggrieved party and any interested person shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. The Director shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the OEP in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the OEP only under special conditions or stipulations.

(e) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(f) The OEP may, in addition to the administrative record and the evidence of record at the hearing, rely in its decision upon such Public Information and such of its own expertise as it deems necessary to assist it in making a decision.

(g) The OEP Director may, in his or her discretion, request or permit the parties to submit additional materials or briefs after the hearing.

(h) The OEP Director shall issue a written decision setting forth pertinent findings of fact and an ultimate determination on the subject of the hearing. The decision shall be delivered to all parties by registered mail, return receipt requested.

(i) Petitions for reconsideration.

(1) Within fourteen (14) days after the decision, any party may request the OEP to reconsider the decision. A petition for reconsideration shall be in writing and state concisely the errors in the decision the petitioner claims should be reconsidered.

(2) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(3) The OEP will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. After the hearing, the OEP may affirm, nullify or revise its earlier decision. Any revised decision shall be a final OEP decision and may be appealed to the Tribal Court of Appeals as provided in Sec. 701, Appeals of this code.

## **Subchapter 9. Miscellaneous**

### **Sec. 280. Savings.**

Nothing in this Title shall:

(a) Supersede or limit the applicability of any law relating to sanitation, industrial health or safety.

(b) Abridge, limit or impair the right of any person to damages or other relief on account of injury to persons or property.

(c) Abridge or alter a right of action or remedy granted to any person by tribal or federal law.

(d) Convey any property rights or any exclusive privilege.

### **Sec. 281. Effective Date.**

This Title shall be effective on the day before the date the United States Environmental Protection Agency publishes its approval of the Fort Peck Underground Injection Control program in the Federal Register.