

## NOTICE

TO ALL INTERESTED PERSONS:

YOU ARE HEREBY NOTIFIED THAT THE FOLLOWING CHANGES IN THE RED CLIFF CODE OF LAWS HAS BEEN PROPOSED TO THE TRIBAL COUNCIL BY THE RED CLIFF ENVIRONMENTAL DEPARTMENT:

CHANGES AND ADDITIONS ARE INDICATED AS **HIGHLIGHTED**  
DELETIONS ARE INDICATED WITH **STRIKETHROUGHS**.

### **PERTAINING TO CHAPTER 12 -- POLLUTION AND ENVIRONMENTAL PROTECTION**

#### **CHAPTER 12 – POLLUTION AND ENVIRONMENTAL PROTECTION**

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### **12.1 SECTION 1: DEFINITIONS PURPOSE**

For purposes of this chapter, the following terms shall have the following definitions:

**12.1.1** Unless otherwise specified, this Chapter shall apply to all relevant activities referenced in this chapter within the exterior boundaries of and adjacent to the Red Cliff Reservation. "POLLUTION" shall refer to the point or non-point source discharge of any solid waste, incinerator residue, chemical waste, biological nutrient, biological material, wrecked or discarded equipment, rubbish, sewage, garbage, trash or other harmful or unsightly substance into any waters, any lands or emitted into the air.  
(08-22-06)

**12.1.2** The purpose of this Chapter is to:

- (a) Regulate the identification of pollution;
- (b) Investigate any discharge of pollution into the environment;
- (c) Control and eliminate pollution that has occurred or may pose a threat of environmental contamination and/or endangers human health;
- (d) Designate appropriate tribal personnel to respond to pollution and environmental contamination;
- (e) Ensure remedial action is appropriate for cleanup of contaminated sites to maintain environmental integrity; and
- (f) Approve, deny, or condition any permits associated with this Chapter. "DANGEROUS ENVIRONMENTAL ACTIVITY" shall refer to the outdoor discharge or spraying of any poison, pesticide, or herbicide, to the commercial use of any such

poison, pesticide or herbicide, and to the demolition of any explosive substance such as gun powder or dynamite, otherwise than through the legitimate use of firearms. Metallic or non-metallic mining activities are likewise defined here as a Dangerous Environmental Activity.

~~12.1.3 "ENVIRONMENTAL CHANGE" shall refer to any dock building, dredging, stream diversion, marsh draining, or similar activity that can potentially alter the environment. Environmental change shall also refer to the removal and disposal of dredged spoil, dirt, slurry, rock, sand or any municipal, industrial or agricultural waste.~~

~~12.1.4 "RADIOACTIVE MATERIALS" are any radioactive waste products or materials generated, refined or made radioactive by any government agency or pursuant to federal or state government contract or license, and including that which the United States Nuclear Regulatory Commission classified as low level radioactive waste as of January 1, 1989, but which may be classified as below regulatory waste after that date.~~

~~12.1.5 "NUCLEAR WEAPON" is any device, the purpose of which is to use as a weapon, a weapon prototype or a weapon test device, the intended detonation of which results from the energy released by fission and/or fusion reactions involving atomic nuclei. "Nuclear Weapon" includes the weapon's guidance and Propulsion system and triggering mechanism, i.e., the means of transporting, guiding, propelling, triggering, or detonating the weapon, provided that such means is destroyed or rendered useless in the normal transporting, guiding, propelling, triggering, or detonation of the weapon.~~

~~12.1.6 "PERSON" means a natural person, as well as a corporation, institution, or other entity.~~

~~12.1.7 "BURN BARREL" Means a container or structure for which the primary purpose is for burning waste.~~

~~(08-22-06)~~

## 12.2 **SECTION 2: POLLUTION DEFINITIONS**

The following terms, wherever used or referred to in this Chapter shall have the following meanings:

12.2.1 "Accessory Structure" means any detached permanent structure separate from the principal structure, including but not limited to;

garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall. If attached to the principal structure, it shall be considered a part of the principal structure.

~~Except as otherwise provided in this section, no person shall cause any pollution:~~

~~a) Within the exterior boundaries of the Reservation;~~

~~b) Adjacent to the reservation;~~

~~c) In Lake Superior within 300 horizontal feet of the Lake Superior High Water Elevation <sup>(1/17/2012)</sup>; or~~

~~d) Through the random disposal of solid waste in lieu of paying tipping at the transfer station is prohibited.~~

~~e) Through the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney. (08-22-06)~~

~~f) Without first receiving a permit from the Environmental Office upon payment of a \$250.00 application fee and Tribal Council approval using the PAC approval process set forth in RCCL Chapter 37.~~

#### 12.2.2

“Appliance” means a piece of equipment operated by gas or electricity, including but not limited to; stove, fan, refrigerator, dishwasher, water heater, and microwave.

~~Any person violating sec. 12.2 shall forfeit not more than \$5000.00 (\$50.00 deposit permitted). In addition to a civil forfeiture, the court may assess other penalties it deems just and proper including but not limited to restitution for any and all damages to the environment, community service, and/or remediation of reclamation costs and expenses incurred by any person or agency involved in the cleanup.~~

#### 12.2.3

“Discharge” means the unintentional or intentional spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of any liquid, gaseous, or solid material.

#### 12.2.4

“Dispose” means the deposit, injection, or placing of any hazardous substance and solid waste in a manner which may permit the substance to be discharged to the environment.

#### 12.2.5

“Electronics” means any device operating with a microchip and transistor that controls and directs an electrical current which include

but are not limited to; televisions, cell phones, computers, laptops, and printers.

**12.2.6** ‘Entity’ means corporation, institution, partnership, and/or tribal, state, or federal agency.

**12.2.7** ‘Environment’ means the physical condition which may be affected by the proposed action, including; land, air, water, minerals, flora, fauna, and objects of historic or cultural significance.

**12.2.8** ‘Environmental Activity’ means:

- (a) The commercial use of any poison, pesticide, or herbicide discharged outside of a principal or accessory structure;
- (b) The demolition of any explosive substance such as gun powder or dynamite, otherwise than through the legitimate use of firearms;
- (c) The operation of an auto salvage yard; or
- (d) The storage of inoperable vehicles, inhabitable mobile homes, electronic waste, hazardous materials, appliances, or tires outside of a principal or accessory structure;

**12.2.9** ‘Environmental Change’ means:

- (a) Any dock building, dredging., filling, stream diversion, wetland draining, or similar activity that potentially alters the biological, chemical, physical, and cultural integrity of the environment;
- (b) Any construction activity that may alter or alters the natural environment (biological, chemical, physical, and cultural integrity) to the extent of the area of impact, whether pre-disturbed or not;
- (c) Removal and proper disposal of dredged materials, dirt, slurry, rock, sand, or municipal, industrial, or agricultural waste;
- (d) The outdoor discharge or spraying of any poison, pesticide, or herbicide;

(e) Demolition with use of any explosive substance such as gun powder or dynamite, other than through the legitimate use of firearms; or

(f) Metallic or non-metallic mining activities.

**12.2.10** “Fauna” means any animal residing in terrestrial or aquatic locations.

**12.2.11** “Flora” means any plant, bacterial, or fungal life of any region, habitat.

**12.2.12** “Hazardous Material” means any substance or any combination of substances, including any waste of a solid, semi-solid, liquid, or gaseous form which may cause or contribute to the degradation of human health or the environment because of its quantity, concentration, or physical, chemical, biological or infectious nature. This term includes, but is not limited to the substances that fall within the following documents:

(a) Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980;

(b) The Resource Conservation and Recovery Act; or

(c) Emergency Planning and Community Right to Know Act (EPCRA) of 1986.

**12.2.13** “Inoperable” means any motor vehicle, auto part, ATV, or trailer not capable of legal operation or use upon a roadway on the Red Cliff Reservation.

**12.2.14** “Invasive Species” means any part of a specimen, eggs, larvae, seeds, and propagules, at any life-stage from a species of flora or fauna that is not native to a specific location and causes damage to the environment, economy, or human health. A comprehensive list of invasive species can be found at: <http://invasives.glifwc.org/> and [www.dnr.wi.gov/topic/invasives/classification.html](http://www.dnr.wi.gov/topic/invasives/classification.html) and will be made available at the Environmental Department.

**12.2.15** “Uninhabitable” means a principal structure that is unlivable by humans for more than thirty (30) consecutive days or not hooked up to a permitted and functioning sewage system for more than thirty (30) days unless used as an accessory structure.

- 12.2.16** "Tire" means a tire, with or without a rim that has been designed for use on a motor vehicle and is not being reasonably used for landscaping or other utilitarian or recreational purpose.
- 12.2.17** "Nuclear Weapon" is means any device, the purpose of which is to use as a weapon, a weapon prototype or a weapon test device, the intended detonation of which results from the energy released by fission and/or fusion reactions involving atomic nuclei. "Nuclear Weapon" includes the weapon's guidance and propulsion system and triggering mechanism, i.e., the means of transporting, guiding, propelling, triggering, or detonating the weapon, provided that such means is destroyed or rendered useless in the normal transporting, guiding, propelling, triggering, or detonation of the weapon.
- 12.2.18** "Person" means a natural person, ~~as well as a~~ owner, lessee, or operator.
- 12.2.19** "Pollution" ~~shall refer to the~~ means point or non-point source discharge of any solid waste, incinerator residue, chemical waste, biological nutrient, biological material, wrecked or discarded equipment, rubbish, sewage, garbage, trash or other harmful or unsightly substance into any waters, any lands or emitted into the air. (08-22-06)
- 12.2.19** "Principal Structure" means a permanent structure that contains the primary function or activity on a lot such as a house or mobile home on a residential lease.
- 12.2.20** "Radioactive Material" means any radioactive waste product or material generated, refined or made radioactive by any government agency, person, or pursuant to federal or state government contract or license, and including that which the United States Nuclear Regulatory Commission classified as low-level radioactive waste as of January 1, 1989, but which may be classified as below regulatory waste after that date.
- 12.2.21** "Pesticides" means a pesticide, herbicide, insecticide, or fungicide, which is intended for preventing, destroying, repelling, or mitigating any pest and registered or exempted by the federal Environmental Protection Agency's Office of Pesticide Programs. List is found: <https://www.epa.gov/pesticide-registration/pesticide-registration-notices-year> .

12.3 **SECTION 3: POLLUTION DANGEROUS ENVIRONMENTAL ACTIVITY**

12.3.1 Except as otherwise provided in this section, no person shall perform or cause any pollution within the exterior boundaries of the Reservation, or permit to be performed any dangerous environmental activity within the exterior boundaries of the reservation.

~~12.3.2 A party must receive a permit to perform or cause or permit to be performed a "dangerous environmental activity" in a designated place. Permits shall be issued by the Environmental Office upon payment of a \$250.00 application fee and Tribal Council approval using the PAC approval process set forth in RCCL Chapter 37.~~

~~12.3.3 Commercial applicers of poisons or pesticides must receive a permit from the Environmental Office upon Tribal Council approval using the PAC approval process set forth in RCCL Chapter 37.~~

~~12.3.4 This section shall not apply to the use of pesticides or herbicides incidental to normal residential use, such as in a garden or residential pest control services, except that such use shall be limited to substances and methods prescribed by regulations of this Code.~~

~~12.3.5 Anyone who violates this section 12.3 shall forfeit not more than \$5000.00 (\$50.00 deposit permitted). In addition to a civil forfeiture, the court may assess other penalties it deems just and proper including but not limited to restitution for any and all damages to the environment, community service, and/or remediation of reclamation costs and expenses incurred by any person or agency involved in the clean up.~~

12.4 **SECTION 4: ENVIRONMENTAL CHANGE PERMIT**

12.4.1 Except as otherwise provided, No person shall cause, or permit to be caused, any environmental change without an Environmental Change Permit issued by the Environmental Department.

12.4.2 Commercial applicers of poisons or pesticides must receive an Environmental Change Permit from the Environmental Department. Environmental Change permits shall be issued by the Environmental Office upon payment of a \$250.00 application fee and Tribal Council approval using the PAC approval process set forth in RCCL Chapter



**12.4.3** No person shall knowingly or negligently possess, transport, or introduce any invasive species into any waterway, roadway, or lands within reservation boundaries unless an Environmental Change Permit has been issued.

**12.4.4** Section 12.4 shall not apply to:

(a) The use of pesticides incidental to normal residential use, such as in a garden or residential pest control services.

(b) Excavation or grading incidental to an already established residential use and within the same footprint, unless operations will cause environmental change and/or pollution. ~~Anyone who violates this section shall forfeit not more than \$5000.00 (\$50.00 deposit permitted.) In addition to a civil forfeiture, the court may assess other penalties it deems just and proper including but not limited to restitution for any and all damages to the environment, community service, and/or remediation of reclamation costs and expenses incurred by any person or agency involved in the clean up.~~

**12.4.5** Environmental Change Permits shall be issued by the Environmental Department. Permit fees shall be determined based on project size. A fee schedule is listed in Appendix A and will be posted in public areas and available at the Environmental Department.

**12.4.6** All conditions imposed by the Environmental Department shall be integrated into the Environmental Change Permit. The permittee must comply with all conditions of the permit. Failure to comply with permit conditions shall constitute a violation of this Chapter and is grounds for:

- (a) Letter of Non-Compliance;
- (b) Enforcement action and citations;
- (c) Penalties and forfeitures set forth in section 12.11.1; and/or
- (d) Permit termination, permit modification, or denial of a permit renewal.

**12.5** **SECTION: 5 ENVIRONMENTAL ACTIVITY PERMIT CRITERIA**

**12.5.1** Except as otherwise provided in this section, no person shall

accumulate, store, or allow any inoperable vehicles, uninhabitable mobile homes, electronic waste, hazardous waste, appliances, or tires outside of a principle or accessory structure upon any public, tribal, or private property without an Environmental Activity Permit. ~~The PAC Team shall recommend no permit to Tribal Council for approval under this Section unless it shall find that the activity in question will not result in injury to the physical and social environment. In no case shall the PAC Team grant permission for the dumping of pollutant substances or the outdoor use of poisons, or pesticides within 300 horizontal feet of the bankfull mark or within the 100 year floodplain.~~  
~~-(1/17/2012)~~

**12.5.2** No person shall establish, operate, maintain, or permit the use of land for a salvage yard within reservation boundaries, without an Environmental Activity Permit. ~~Upon any violation of the foregoing provisions of section 5, the violator shall be barred from receiving any permits authorized under Chapter 12, for a period of 2 years from the date of the forfeiture.~~

**12.5.3** Exclusions. This section will exclude the following activities and tribal personnel from the Environmental Activity Permit process:

(a) Law Enforcement Officers and members of the Fire Department using hazardous materials in carrying out their responsibilities to protect public health, safety, and welfare. However, these Departments shall notify the Environmental Department of any discharges of a hazardous material occurring in the performance of their duties;

(b) Any residential person applying and storing a registered pesticide according to the label instructions; or

(c) Any commercial or non-residential pesticide applicator.

**12.5.4** Environmental Activity Permits shall be issued by the Environmental Department. Permit fees shall be determined by activity type. A fee schedule is listed in Appendix A and will be posted in public areas and available at the Environmental Department.

**12.5.5** All conditions made by the Environmental Department will be integrated into the Environmental Activity Permit. The permittee must comply with all conditions of the permit. Failure to comply to permit conditions constitutes a violation of this Chapter and is grounds for enforcement action, penalties, and forfeitures set forth in section 12.11.1 and subject to permit termination, permit

modification, or denial of a permit renewal.

**12.6**            **SECTION 6: ILLEGAL DUMPING MALICIOUS WASTE**

**12.6.1**            No person(s) shall maliciously improperly dispose of any solid waste, appliances, recyclable materials, electronic waste, or hazardous waste in areas or containers other than designated waste collection facilities or containers designated for disposal purposes. ~~injure, destroy, or impair any natural resource within the external boundaries of the Reservation.~~

~~**12.6.2**            Any Anyone who violates sec. 12.7 violations of this section shall be subject to provisions set forth in RCCL Chapter 12.3. shall forfeit no more than \$5000.00 (\$50.00 deposit permitted). In addition to a civil forfeiture, the court may assess other penalties it deems just and proper including but not limited to restitution for any and all damages to the environment, community service, and/or remediation of reclamation costs and expenses incurred by any person or agency involved in the clean up.~~

**12.7**            **SECTION 7: NUCLEAR FREE ZONE**

**12.7.1**            Except as specifically exempted in this section, no person shall import, store, incinerate, treat, process, or dispose of radioactive materials, for any purpose, within the Red Cliff Reservation, ~~or within landfills or incinerators owned or licensed by the Red Cliff Band of Lake Superior Chippewa Indians.~~

**12.7.2**            ~~Except as specifically exempted in this section, n~~**N**o person shall knowingly, within the Red Cliff Reservation, design, test, produce, deploy, launch, maintain, or store nuclear weapons or components of nuclear weapons.

**12.7.3**            ~~Except as specifically exempted in this section, n~~**N**o person shall construct, or operate, a nuclear reactor within the Red Cliff Reservation, until the United States government has established a permanent high-level radioactive waste disposal site that is contracted to accept the high-level radioactive waste generated by the aforementioned nuclear reactor.

**12.7.4**            ~~Except as specifically exempted in this Section, n~~**N**o person shall construct or operate **any radioactive materials,** ~~uranium~~ mine, or

milling operation within the Red Cliff Reservation.

~~12.7.5~~ Each violation of this section shall be punishable by a \$1,000 fine. Each day of violation shall be deemed a separate violation.

**12.7.65** Exclusions. Nothing in this ordinance shall be construed to prohibit:

- (a) Any activity not specifically described in this ordinance **Section**;
- (b) Basic research and/or any writing or speech devoted to public commentary or debate;
- (c) The research, application, or temporary storage of radioactive materials used in medicine;
- (d) Consumer uses of radioactive materials for smoke detectors, light emitting watches or clocks, and other similar incidental applications; or
- (e) Industrial radiography and tracer processes.

## **12.8**      **SECTION 8: ILLEGAL BURNING**

**12.8.1** It shall be unlawful for any person, industry, or business to burn **solid waste garbage, recyclables materials, or any other form of waste except grass, brush, and wood yard waste.** (08-22-06)

**12.8.2** It shall be unlawful for any person to burn grass, brush, and wood without a Burn Permit in accordance with Chapter 11 of the Red Cliff Code of Laws.

~~12.8.2~~ Anyone who violates section 12.98.1 shall be subject to provisions set forth in RCCL Chapter 12.3. forfeiture not to exceed \$5,000.00. (08-22-06)

## **12.9**      **SECTION 9: ENFORCEMENT AUTHORITY**

**12.9.1** It shall be the duty of Conservation Wardens and/ or Law Enforcement in coordination with the Environmental Department to enforce the provisions of this Chapter through periodic inspections and inspections upon complaints. Upon verification of a violation and environmental damages, the Environmental Director shall issue written notice of noncompliance to the possessor of the property. Lack of corrective action(s) listed within timeframes laid out in the notice may result in citation or other appropriate enforcement action. A Conservation Warden or Law Enforcement Officer may issue a citation to the possessor of the property upon which the violation is found and the person permitting or maintaining the violation.

**12.9.2** The Environmental Department shall conduct inspections to ensure compliance with any permit and permit conditions within this Chapter.

**12.10** **SECTION 10: REMEDIAL ACTION**

**12.10.1** The Environmental Department shall conduct investigations, inspections, and environmental assessments upon notification of pollution within reservation boundaries. Remedial Actions include:

(a) The Environmental Department shall take immediate action to halt and contain any discharge of pollution or hazardous waste to minimize any human and environmental effects;

(b) The Environmental Department will determine if the pollution has caused contamination;

(c) The Environmental Department shall determine appropriate remedial actions and cleanup activities. Clean up actions may include replacement and/or removal of injured flora and fauna and contaminated soils, treatment of injured flora and fauna and contaminated soils, determination of adequate storage and disposal methods to prevent further and future discharges, and replacement or repair of equipment, and other remedial actions that restore the quality of the environment; and

(d) Upon verification that no further remedial action is necessary on the site of concern, the case shall be closed.

**12.11** **SECTION 11: PENALTIES**

**12.11.1** Any person convicted of violating any provisions of this Chapter shall forfeit not more than \$5,000.00 per violation. In addition to a civil forfeiture, the court may assess other penalties it deems just and proper including but not limited to restitution for all damages to the environment, community service, and/or remediation or reclamation costs and expenses incurred by any person and/or entity involved in the cleanup.

**12.11.2** This Chapter hereby establishes the Red Cliff Environmental Fund,

which shall be managed by the Environmental Department. The purpose of the Environmental Fund shall be used to cover costs associated with the proper disposal of pollution and environmental monitoring to ensure success of remediation efforts.

**12.11.3** A penalty assessment of 15% of the amount of any forfeiture imposed for a violation of this Chapter shall be set aside by the court for the Red Cliff Environmental Fund.

**Chapter 12 Appendix A – Permit Fees and Procedures**

The following costs based on project nature, activity type, and impact area shall be incorporated into the permit fee for Chapter 12 permits issued by the Environmental Department (See Table 1). This fee is due upon permit issuance by the Environmental Department. Permit Fee Schedule may change based on, but not limited to, activity risks and science. Public notifications will be sent out upon any changes.

**Table 1.** Chapter 12 Permit Fee Schedule.

<b>Project Type</b>	<b>Cost</b>
<b>Base Environmental Review</b>	\$20
<b>Environmental Change Permit</b>	
Minor (<1 Acre)	\$20
Major	-
1-5 Acres	\$100
6-10 Acres	\$200
Equal to or more than 11 Acres	\$300 *additional \$20 per acre over 11 acres
<b>Application of Pesticides</b>	
Commercial Use	\$10
<b>Environmental Activity Permit</b>	
Auto Salvage Yard	\$150
<b>Structural Changes</b>	
Demolition (per principal structure)	\$50
<b>Storage Operations</b>	
Petroleum Products	\$100
Tires	\$100
Appliances	\$50
<b>Special Considerations</b>	
After Math **	Double Permit Fee

\*\* Only applies to PAC applicants that have submitted a PAC application and work has commenced without prior project permits issued by the Environmental Department.

PUBLIC COMMENT ON THIS PROPOSAL IS ENCOURAGED. PLEASE DROP YOUR COMMENTS AT THE TRIBAL ADMINISTRATION BUILDING OR FORWARD THEM DIRECTLY TO THE TRIBAL COUNCIL. THIS PROPOSAL WILL BE VOTED UPON ON **Monday MAY 6<sup>TH</sup>, 2019** AT THE REGULAR MEETING OF THE RED CLIFF TRIBAL COUNCIL. IF THE COUNCIL ENACTS THIS CODE CHANGE, THE CODE CHANGE SHALL BECOME EFFECTIVE ON **upon enactment.**

DATED: April 2, 2019