

Resolution No. 86-179-C

RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934 and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article VI, Section 5 (j), of the Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to protect and preserve the property, wildlife, and natural resources of the tribes; and

WHEREAS, Certain activities associated with oil and gas development, such as, improper or inadequate lining of reserve pits, improper disposal of drilling fluids, drill cuttings, and production water, adversely affect the environment and are a threat to the health and welfare of the residents of the Fort Berthold Indian Reservation; and

WHEREAS, The Tribal Business Council desires to protect the health and welfare of the residents of the Fort Berthold Indian Reservation and prevent deterioration of the quality of the environment on the Fort Berthold Indian Reservation.

NOW THEREFORE BE IT RESOLVED, That Tribal Business Council of the Three Affiliated Tribes hereby approves, subject to additional review by the Legal Department, the attached Ordinance regulating certain oil and gas drilling activities.

BE IT FURTHER RESOLVED, That the Tribal Business Council rescinds Tribal Resolution 85-234-C.

Ordinance of the Three Affiliated Tribes

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1 General

1.1 Purpose

The purpose of this Ordinance is to protect the soil and water resources of the Fort Berthold Indian Reservation from contamination resulting from: 1) reserve pits utilized in oil and gas drilling operations; 2) the use of saltwater based drilling fluids ; 3) the improper disposal of drilling fluids and cuttings generated by oil and gas drilling operations; and 4) the improper disposal of production water.

The purpose of this Ordinance shall be realized through: 1) the proper lining of reserve pits; 2) the use of freshwater based drilling fluids to a prescribed depth; and 3) the proper disposal of drilling fluids and cuttings, and production water. The adoption of this Ordinance, is intended to preserve the quality of the existing soil and water resources for this generation and generations to come. By adopting this Ordinance the health and welfare of all residents of the Fort Berthold Indian Reservation shall be protected.

1.2 Authority

The authority for adapting this Ordinance is granted in Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes. Article VI, Section 5(j) empowers the Tribal Business Council "to protect and preserve the property, wildlife, and natural resources of the tribes...."

1.3 Scope

All individuals, companies, or corporations (hereafter referred to as operator) that shall drill or cause to have drilled any oil wells, gas wells, or stratigraphic tests on the Fort Berthold Indian Reservation are subject to this Ordinance. Additionally, all individuals, companies, or corporations which shall transport (hereafter referred to as transporter) and/or dispose of drilling fluids, drill cuttings, and production water shall be subject to this Ordinance.

1.4 Delegation of enforcement

The Tribal Business Council of the Three Affiliated Tribes hereby delegates to the Natural Resources Department (NRD) the authority and obligation to enforce of this Ordinance.

1.5 Copy of rules on location

A copy of this Ordinance must be on the location. The operator's representative must be familiar with the requirements set forth in this Ordinance.

2 Lining of Reserve Pits

2.1 Conditions where a single liner is acceptable

All drilling operations which utilize a reserve pit for the storage of drill cuttings and drilling fluids shall line said reserve pit. The line shall have a minimum burst strength of one hundred and forty (140) pounds per square inch.

The operator shall contact, or have cause to be contacted the Natural Resources Department (NRD), during normal working hours, when the reserve pit is 50% excavated. Upon notification the NRD will send an authorized representative to the excavated reserve pit to inspect said excavation before it is lined. The characteristics of the excavated reserve pit shall be noted and recorded by the NRD inspector.

2.2 Conditions requiring a double liner

In those instances where the reserve pit is: 1) excavated in areas of highly permeable material such as sand, gravel, or lignite; or 2) excavated in material where rocks with sharp edges are visible, the reserve pit shall also be lined with bentonite. Said bentonite shall be commercially processed and applied as a slurry to a thickness sufficient to completely cover the exposed surface of the reserve pit.

If the operator is required to line the reserve pit because of condition number two above he may alternatively remove all visible rocks with sharp edges.

2.3 Protection of pit liner(s)

The operator shall insure that the reserve pit liner remains intact during the drilling operation. No trash or other foreign objects shall be disposed of in the reserve pit.

3 Drilling fluids

3.1 Use of freshwater through the Fox Hills Formation

The operator shall insure that only freshwater based drilling fluids are used to drill through the Fox Hills Formation. For the purpose of this Ordinance freshwater shall be considered to be any water with less than 10,000 parts per million (ppm) total dissolved solids (tds). For the purpose of

this Ordinance the Fox Hills Formation shall be that stratigraphic unit lying below the Hell Creek Formation and above the Pierre Formation. The characteristics, lithology, and formation tops and bottoms, of said formations shall be those recognized by the North Dakota Geologic Survey.

3.2 Record of drilling additives

The operator shall keep an accurate record of all compounds and the quantity added to the drilling fluid during the drilling operation and/or used during formation testing or stimulation. A copy of such record shall be supplied to the NRD upon completion, abandonment, or release of the rig if no completion is attempted.

4 Disposal of drilling fluids, drill cuttings, and production water

4.1 Disposal of drilling fluids and production water

Within thirty (30) days of completion, abandonment, or release of the rig if no completion is attempted all fluid within the reserve pit shall be removed from the pit. The drilling fluids and any water produced during the drilling or production phase of the well shall be disposed of at an approved disposal facility. Such facility shall be approved by at least one of the following: 1) the Three Affiliated Tribes; 2) the North Dakota State Industrial Commission; 3) the United States Environmental Protection Agency; or 4) the Bureau of Land Management. The drilling fluids or production water may also be transported to and disposed of at a reserve pit on a drilling location, provided that the Pierre Formation has been penetrated. The operator and transporter are required to keep copies of any and all receipts and/or run tickets for each load of drilling fluids removed. Said copies shall be made available to the NRD upon request. The NRD may inspect the transporters equipment to insure that it is a safe and suitable carrier for the materials being transported.

4.2 On site disposal of cuttings

Stabilized cuttings may be disposed of onsite when the following conditions are met; 1) the reserve pit is located entirely within a cut area and the characteristics of the excavated material, as recorded at the time of the inspection performed pursuant to Section 2.1, contain less than fifty percent (50%), by volume sand, gravel, or other highly permeable material; and 2) the reserve pit is reclaimed within thirty (30) days from the date of the completion, abandonment, or from the date the rig is released if a completion is not attempted. Provided, however, that the reserve pit is not located in a known area of shallow ground water or within two hundred and fifty (250) feet of flowing or standing surface waters.

4.3 Conditions requiring removal of drill cuttings

Any drilling operation not meeting the criteria set forth in Section 4.2 of this Ordinance shall have the cuttings transported from the drilling location. All drilling operations utilizing closed drilling fluid circulating systems shall dispose of the cuttings at an approved disposal facility. An approved disposal facility may either be on or off the reservation. If off the reservation the facility shall be approved of by the North Dakota State Department of Health. If on the reservation the facility shall be approved of by the Three Affiliated Tribes pursuant to Section 7 of this Ordinance.

5 Stabilization of cuttings

5.1 Meaning of stabilization

For the purpose of this Ordinance, the term "stabilization of cuttings" shall mean: 1) altering the physical characteristics of the cuttings to a state where they will not run.

5.2 Timing of stabilization

The cuttings may either be stabilized during the drilling process or within thirty (30) days from the date of the completion, abandonment, or release of the rig if a completion is not attempted.

5.3 Acceptable methods of stabilization

Any method of stabilization which can adequately be shown to meet the requirements of Section 5.1 of this Ordinance shall be considered acceptable. The burden of showing the adequacy of such method rests upon the operator.

6 Transportation of cuttings

6.1 Consistency with federal laws and regulations

The classification of a component of the drill cuttings being considered a hazardous or non-hazardous solid waste shall be made pursuant to 40 CFR 261.4 (b)(5). 40 CFR 261.4 (b)(5) classifies drilling fluids, produced waters, and other wastes associated with exploration, development, or production of crude oil, natural gas or geothermal energy as solid wastes which are not hazardous wastes.

6.2 Tribal non-hazardous waste transport permit

Each transport company transporting cuttings, either through or within the Fort Berthold Indian Reservation, from a drilling location to a disposal site approved by the appropriate authority and located either on or off the Reservation, shall obtain a Tribal Non-Hazardous Waste Transport Permit from the Natural Resources Department. The Natural Resources Department shall charge a Fifty Five Dollar (\$55.00) fee for the issuance of each permit. The term of the permit shall be one year. For each load of cuttings transported a separate load identification form shall be completed.

6.3 Display of permit number

Each vehicle transporting cuttings through or within the Fort Berthold Indian Reservation shall display the Tribal Non-Hazardous Waste Transport Permit in a prominent, highly-visible position on the transport vehicle. The permit number shall be displayed in numerals at least four (4) inches high.

6.4 Transportation Procedures

The driver of each transport vehicle shall complete part II of the load identification form. The driver of the transport vehicle shall clean the tailgate and other areas of the transport vehicle after it has been unloaded. The material cleaned from the truck shall be disposed of with the other cuttings. Operators of transport vehicles shall ensure that truck boxes are sufficiently tight as to ensure that cuttings will not be lost during the transportation process. Each truck shall be equipped with a secondary safety device to prevent the tailgate from opening if the primary closure should fail or become unsecured.

7 Drill cutting disposal sites

7.1 Requirements for disposal site application

Prior to the approval of an application for a cuttings disposal site by the Tribal Business Council the following requirements shall be complied with:

- 1) A topographic survey of the site shall be completed by a licensed surveyor for the State of North Dakota detailing the drainage patterns of the site. The surveyor shall measure and record the locations and elevations of all proposed borings. The proposed trenches or pits shall be plotted on a copy of the topographic map.

- 2) Monitoring wells of such depth and number, as established by a licensed geologist and the Natural Resources Department, shall be installed on the site for the purpose of detecting and monitoring perched ground water and any contamination resulting from activities at the site.

3) A detailed geohydrological report shall be made after completion of the topographic borings and wells.

4) When determined as necessary by the NRD applicable a diversion dike shall be constructed.

5) When determined as necessary by the NRD the trench(es) or pits shall be lined in accordance with Section 2 of this Ordinance.

6) Permanent markers shall be placed at each corner of the plotted disposal area.

7) The operator of each disposal site shall furnish a performance bond of at least Twenty Five Thousand Dollars (\$25,000.00). The amount of each bond shall be established by the Tribal Business Council but in no case shall be less than twenty five thousand (\$25,000.00).

7.2 Conditional permit to operate

After the requirements of Section 7.1 have been complied with, the Tribal Business Council may approve the site and issue to the operator a conditional use permit. A conditional use permit issued for a particular site is not transferable for use at another site or to another operator.

7.3 Requirements of conditional use permit

After the approval and issuance of a conditional use permit the following requirements shall be complied with:

1) The operator of the disposal site shall accept no liquids.

2) The operator of the disposal site shall ensure that no transporter leaves the disposal site with waste accumulated on the wheels of the vehicle.

3) The operator of the disposal site shall take and preserve a sample of each load brought to the site for disposal. Samples may be discarded only as directed the Natural Resources Department.

4) The waste disposal site operator shall complete part III of the load identification form and retain the form until it is submitted to the Natural Resources Department. The operator shall also keep a daily log of activities conducted at the facility.

5) Monitoring wells shall be measured on a monthly basis to determine if water is accumulating. Any water collected in any monitoring well shall be tested for the following parameters:

A) total alkalinity (CaCO₃), Arsenic (As), Bicarbonate (HCO₃), Cadmium (Cd), Calcium (Ca), Carbonate (Ca), Chloride (Cl), Total Chromim, Flouride (F⁻), Hardness (as Calcium Carbonate), Iron (Fe), Lead (Pb), Magnesium (Mg), Manganese (Mn), Mercury (Hg), Nitrate (NO₃), pH, Potassium (K), Sodium (Na), Specific Conductance, Sulfate (SO₄), Total Dissolved Solids, Selenium (Se), Barium (Ba), Silver (Ag), Molybdenum (Mo).

All metals are analyzed after samples have been filtered through a 0.45 u membrane. Specific conductance is to be reported in micromhos at 25 degrees C. All other constituents to be reported in milligrams per liter. The NRD may assign additional chemical parameters to be analyzed depending on the chemical composition of the wastes handled.

6) After each trench or pit has been backfilled, excess earth shall be spread and graded in such a manner that it does not impede drainage or cause rainfall or other moisture to pool or puddle over the backfilled area.

7) As wastes accumulate in trenches and/or pits, additional cover shall be placed into the trenches and/or pits to prevent water from pooling or ponding with them, thus minimizing the potential for leachate generation and migration. If necessary, consolidation shall continue after filling. Periodic maintenance to maintain drainage shall be conducted.

8) The NRD shall conduct weekly inspections of the site. At that time, the operator shall supply copies of the daily logs and load identification forms for the time period elapsed from the previous visit. The NRD will submit written reports to the Natural Resources Committee on a monthly basis. Copies of the facility operator's daily logs and load identification forms shall be appended to those reports. Weekly inspections and monthly reports shall continue until such time as the NRD recommends, and the Natural Resources Committee and Tribal Business Council, concur that they are no longer necessary. After the Tribal Business Council concurs with that recommendation the facility shall be inspected at a minimum of one time per month.

9) The NRD shall be authorized to request technical assistance from the United States Environmental Protection Agency, the North Dakota State Health Department, the Bureau of Indian Affairs, or the Bureau of Land Management if needed.

8 Inspections, violations, and civil penalties

8.1 Inspections

All drilling, transport, and disposal operations meeting the criteria set forth in this Ordinance shall be made available for inspection by properly authorized and identified NRD personnel in order to determine if said operation is in compliance with the standards set forth in this Ordinance. Furthermore; the drilling logs, books, run tickets, receipts for water and drilling fluids, and/or any other records relating to the operation which are subject to this Ordinance shall be made available for review to said tribal personnel upon oral request.

8.2 Violations

Failure to comply with any condition or requirement prescribed by this Ordinance shall be deemed a violation.

8.3 Civil penalties

For each violation of this Ordinance a civil penalty shall be assessed upon a finding of such violation by the Natural Resources Committee. The alleged violator shall have the right to appear at a hearing, upon due notice of no fewer than ten (10) days, and present such evidence as he may deem relevant to the alleged violation. The Natural Resources Committee shall determine whether the alleged violation has in fact occurred and shall set forth the findings in written form. Copies of the findings shall be served upon the alleged violator at his last known address. The Natural Resources Committee shall make these findings no later than ninety (90) days from the date of the hearing. The amount of each civil penalty shall be no less than One Hundred Dollars (\$100.00) and not more than Ten Thousand (\$10,000.00) Dollars.

9 Deposit against damages, monitoring program, and mitigation

9.1 Deposit against potential damages

Depending on the nature of the violation and after a fine has been assessed the operator shall deposit the amount of Twenty Five Thousand Dollars (\$25,000.00), or a larger amount as may be determined in an interest bearing account in a banking or savings institution approved by the Three Affiliated Tribes. In order for withdrawal to be made from said account the signature of the authorized officer of the operator and the signature of the Treasurer of the Three Affiliated Tribes Tribal Business Council shall be required. Withdrawals from said account are to be utilized solely for the purpose of mitigating damages caused by the violation. The extent of damages shall be determined by a tribally approved monitoring program.

9.2 Monitoring Program

After it has been determined that potential damages may exist and a fine has been assessed the operator shall prepare and submit to the NRD a monitoring plan to determine the degree of damage caused by the violation. Available water quality data shall be utilized in determining background levels for the area of concern. Said monitoring plan must meet with the approval of the NRD and have a duration of at least three (3) years. The monitoring plan shall be implemented by a firm of the Tribes choice. If the results of the monitoring plan indicate soil and or water resources have been degraded as a result of a violation a mitigation plan shall be prepared and submitted to the NRD.

9.3 Mitigation plan

After it has been ascertained through the implementation and findings of the monitoring plan that the violation has degraded soil or water resources a mitigation plan shall be prepared by the operator. The NRD and Natural Resources Committee shall take under consideration the desires of the landowners in the area of concern when reviewing and approving said plan. After the mitigation plan has been satisfactorily complied with the operator shall be relieved of further responsibility. Any portion of aforesaid deposit remaining after the mitigation plan is satisfactorily complied with shall be divided equally among the landowners in the area of impact.

C E R T I F I C A T I O N

I the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitutes a quorum, 7 were present at a SPECIAL Meeting, thereof duly called, noticed, convened, and held on the 19th day of SEPTEMBER, 1986; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman (voting) ~~(not voting)~~.

Dated this 19th day of September, 1986.

John Charging
John Charging
Secretary, Tribal Business Council

ATTEST:

Alyce Spotted Bear
Alyce Spotted Bear
Chairman, Tribal Business Council