

**FINAL DRAFT
ADOPTED BY TRIBAL BUSINESS COUNCIL
JULY 11, 2018**

THREE AFFILIATED TRIBES

TITLE [X]

OIL AND GAS CODE

CHAPTER [X.X]

OIL AND GAS PIPELINE SAFETY CODE

SECTION 1. PURPOSE, AUTHORITY & CONSTRUCTION.

§__-1-1. Purpose.

It is hereby declared to be the purpose and policy of the Tribal Business Council in enacting this Chapter to establish and empower the MHA Pipeline Authority, in addition to all other powers conferred and duties imposed upon it by law, to prescribe and enforce safety standards for pipelines and pipeline facilities (as hereinafter defined), and to regulate the safety practices of persons engaged in the transportation of natural gas, hazardous liquids, or produced water through pipelines and pipeline facilities on the Fort Berthold Indian Reservation.

§__-1-2. Authority.

This Chapter is adopted pursuant to authority vested in the Tribal Council under the Constitution and By-laws of the MHA Nation, Article V, Section 8(a)(9) to protect, preserve and regulate the use of property, both surface and subsurface, wildlife, land, air, and other natural resources (including surface and ground waters) of the Nation. The MHA Nation shall have full authority over enforcement of this Chapter and may delegate authority to designated MHA Nation departments, agencies and legal counsel, as deemed appropriate, to implement and enforce provisions of this Chapter.

§__-1-3. Construction.

Enactment of this Chapter is not intended to contravene or limit the authority vested in the Tribal Council under the Constitution and By-laws of the MHA Nation, Article V, Section 8(a)(9) to protect, preserve and regulate the use of property, both surface and subsurface, wildlife, land, air, and other natural resources (including surface and ground waters) of the Nation. The MHA Nation shall have full authority over enforcement of this Chapter and may delegate authority to designated MHA Nation departments, agencies and legal counsel, as deemed appropriate, to implement and enforce provisions of this Chapter. Nothing in this Chapter shall be construed to limit or diminish the right of the MHA Nation to require its prior, informed written consent to rights-of-way and easements over lands on the Fort Berthold Indian Reservation, guaranteed by federal law and regulations.

SECTION 2. DEFINITIONS

§__-2-2. Definitions.

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Where appropriate, the definitions in Chapter [X.X] of the Oil and Gas Pipeline Code also apply to this Chapter. Additionally, when used in this Chapter, the following definition apply:

(a) “Abandoned pipeline” means a pipeline that is physically separated from its source and is no longer being maintained or used. This definition applies to all transmission, trunk and gathering pipelines used for both liquids and gas.

(b) “Director” means the director of the pipeline safety section or division within the MHA Pipeline Authority.

(c) “Federal Pipeline Safety Statutes” means the Acts of the United States Congress codified at 49 U.S.C. § 60101 et seq., to reflect the current governing law.

(d) “Hazardous liquid” means:

(1) Oil, petroleum or any petroleum product, and

(2) Any other substance or material which is in liquid state (excluding liquefied natural gas) contained in or transported by pipeline facilities and which, as determined by the MHA Pipeline Authority, may pose an unreasonable risk to life or property; provided, however, that the MHA Pipeline Authority shall not determine that any substance or material is a hazardous liquid under this subsection if such substance or material is not a hazardous liquid under regulations promulgated in accordance with Section 202(2) of the Hazardous Liquid Pipeline Safety Act of 1979.

(e) “Idle Pipeline” means a pipeline that is not in physical operation, and is no longer used or maintained by a Pipeline Operator or Owner provided that, the Pipeline Operator or Owner demonstrates to the MHA Pipeline Authority the idle pipeline’s potential for future operation and utilization.

(f) “MHA Nation” means the Mandan, Hidatsa and Arikara Nation, a federally recognized Indian tribe also known as the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

(g) “MHA Pipeline Authority” means the tribal agency established by this Chapter to carry out the purposes of this Chapter.

(h) “Person” means an individual, corporation, partnership, or other entity.

(i) “Pipeline” means a line of connected pipes, whether existing or to be constructed, that is used for carrying crude oil, its byproducts, produced water or other liquids and gases over any part of the exterior boundaries of the Fort Berthold Indian Reservation. The term excludes lines of connected pipes within a petroleum production facility and any connected pipes that carry fresh water.

(j) “Pipeline Company” or “Pipeline Operator” means a person engaged or proposing to engage in the operation or ownership of pipeline facilities used for the transportation of natural gas, hazardous liquids, or produced water subject to the provisions of this Chapter.

(k) “Pipeline facility” or “pipeline facilities” means, without limitation, any new and existing rights-of-way and any equipment, facility, or building used or to be used in the pipeline transportation of:

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- (1) Produced water or the treatment of produced water;
- (2) Natural gas or the treatment of natural gas during the course of transportation; or
- (3) Hazardous liquid or the treatment of hazardous liquid during the course of transportation;

(l) “Produced water” means the waste stream generated in the drilling, extraction, and production of oil and natural gas (or a mixture of both) transported through pipeline and pipeline facilities and which can include flow from above, below or within a hydrocarbon zone as well as flow from injected fluids and additives.

(m) “Reservation” means all lands within the exterior boundaries of the Fort Berthold Indian Reservation.

(n) “Secretary” means the United States Secretary of Transportation.

(o) “Tribal Court” means the Fort Berthold District Court of the MHA Nation.

SECTION 3. ESTABLISHMENT OF THE MHA PIPELINE AUTHORITY.

§ ___-3-1. In general.

The Tribal Business Council declares that the establishment of the MHA Pipeline Authority is in the Nation’s interest and will assure coordinated and effective administration of the MHA Nation’s laws, regulations and policies pertaining to the use of the MHA Nation’s lands for pipelines, particularly as they relate to pipeline safety, removal and remediation. The MHA Pipeline Authority shall be a part of the Natural Resources Department and the Energy Division for administrative and oversight purposes. In addition, the MHA Pipeline Authority shall provide regularly reports to the Natural Resources Committee, which shall be the designated Tribal Business Council oversight committee for the MHA Pipeline Authority operations and activities.

§ ___-3-2. Effective date.

The provisions of this Title shall take effect on _____, 2018.

SECTION 4. POWERS AND DUTIES OF THE MHA PIPELINE AUTHORITY.

§ ___-4-1. Jurisdiction.

(a) The MHA Pipeline Authority shall have power and authority to implement this Chapter and to prescribe and enforce safety standards, guidelines, and regulations for pipelines companies and pipeline operators and for existing and proposed pipelines and pipelines facilities located within the exterior boundaries of the Reservation to the extent not expressly preempted by the Federal Pipeline Safety Statutes, and any amendments thereto or the regulations issued thereunder by the Secretary.

(b) The MHA Pipeline Authority is delegated and shall have the authority to issue and place into effect standards, guidelines, and regulations under this Chapter. The MHA Pipeline Authority shall have

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the authority to issue a permit authorizing the construction and installation of all pipelines on the Reservation.

(c) The MHA Pipeline Authority shall have the power and authority to regulate abandoned pipelines on the Reservation. Such authority may include, but not limited to overseeing and requiring:

- (1) The proper isolation, cleaning, flushing and purging of pipelines to be removed from service, as well as removal of lines that interfere with the placement of new development;
- (2) The removal of any supplemental systems such as cathodic protection;
- (3) The removal of the entire pipeline portion that is to be taken out of service; and
- (4) The proper restoration of the land impacted by the removal process including the trench and associated land.

(d) The MHA Pipeline Authority shall have the power and authority to investigate and regulate pipeline spills, leaks, bursts, seepages, escapes, degradation, contamination and other related events that threaten the lands, water, resources, game, fish, livestock and people working and residing on the Reservation.

(e) The MHA Pipeline Authority shall have the power and authority to regulate the safety of pipelines carrying produced water, and shall specifically promulgate rules and policies setting forth the following requirements for produced water pipelines:

- (1) Demonstrate the ability to maintain the structural integrity of the pipeline under ordinary, foreseeable to anticipated temperature and other environmental conditions;
- (2) Show chemical compatibility with any gas that may be transported in the pipeline and any other material in the pipeline with which they are in contact;
- (3) Demonstrate qualification consistent with applicable minimum requirements authorized by this Chapter; and
- (4) Establish new pipe qualification standards for use when it is manufactured in accordance with certain specifications.

(f) The MHA Pipeline Authority may require pipeline companies and pipeline operators to maintain and file reports, records and other information in such form and detail as the MHA Pipeline Authority may prescribe.

(g) The standards, guidelines, and regulations issued by the MHA Pipeline Authority under this Chapter shall apply to the design, material, installation, inspection, testing, construction, extension, operation, and in the replacement and maintenance of existing or construction of new pipeline facilities.

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(h) The standards, guidelines, and regulations issued by the MHA Pipeline Authority shall be designed to meet the need for pipeline safety. In prescribing standards, guidelines, and regulations, the MHA Pipeline Authority shall consider:

- (1) Relevant available pipeline safety data and relevant industry standards;
- (2) Whether the standards, guidelines, and regulations are appropriate for the particular type of pipeline transportation;
- (3) The reasonableness (including cost) of any proposed standards, guidelines, and regulations; and
- (4) The extent to which such standards, guidelines, and regulations will contribute to public safety and the well-being of tribal members residing on the Reservation. This factor shall be the overriding objective of any standard, guideline, or regulation.

(i) The MHA Pipeline Authority shall have the power and authority to determine that a particular facility, activity, or person is within its jurisdiction and subject to its standards, guidelines, and regulations. Whenever the MHA Pipeline Authority determines a particular pipeline facility or activity to be hazardous to life or property, it shall be empowered to require the person(s) owning or operating such facility to take such steps necessary to remove such hazards or cease such activity (or both).

(j) The MHA Pipeline Authority is authorized to issue regulations as may be necessary to address the applicability and timing of (including partial or permanent waiver of) standards, guidelines, and regulations applicable to existing pipelines. The MHA Pipeline Authority shall consult with the Tribal Business Council on the adoption of new regulations.

§ ___-4-2. General Investigatory Powers.

The MHA Pipeline Authority shall have power to:

- (a) Investigate all methods and practices of pipeline companies, pipeline operators and persons as those investigations pertain to the authorities and mandates set forth in this Chapter;
- (b) With reasonable notice to pipeline companies and pipeline operators, enter upon and to inspect the property, buildings, plants, pipeline facilities, and offices of pipeline companies and pipeline operators; and
- (c) Inspect books, records, papers and documents of pipeline companies and other persons relevant to the enforcement of this Chapter.

§ ___-4-3. Consultation with the Federal and State Governments.

(a) The MHA Pipeline Authority shall have the power and authority to consult with the Secretary as provided in Section 30 of the Act of 2011 and with appropriate North Dakota state agencies on matters arising under this Chapter.

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(b) The MHA Pipeline Authority is hereby authorized and empowered to accept for the MHA Nation, and to expend for the purpose designated, any funds that may hereafter be made available to the MHA Pipeline Authority out of the federal treasury by an act or acts of Congress and allocated to MHA for the purpose of carrying out the provisions of this Chapter and Title 49 of the United States Code applicable to pipeline safety.

SECTION 5. REPORTING REQUIREMENTS OF PIPELINE COMPANIES AND PIPELINE OPERATORS.

§__-5-1. In General.

Every pipeline company and pipeline operator shall comply with the provisions of this Chapter and all valid standards, guidelines, and regulations issued by the MHA Pipeline Authority. No pipeline company and pipeline operator may construct or install a pipeline facility without the prior approval of the MHA Pipeline Authority and its certification that the pipeline company and pipeline operator and the pipeline facilities meet or exceed the safety standards and practices of this Chapter and the standards, guidelines, and regulations issued by the MHA Pipeline Authority.

§__-5-2. Inspection, Operations, and Maintenance Plans.

Every pipeline company and pipeline operator shall file with the MHA Pipeline Authority a plan for inspection, operations, and maintenance of the pipeline facilities owned or operated by it, and shall subsequently file any changes in such plan, in form and content as the MHA Pipeline Authority may prescribe.

§__-5-3. Annual Safety Reports; Incident Reports.

(a) As prescribed by the MHA Pipeline Authority, every pipeline company and pipeline operator shall file with the MHA Pipeline Authority an annual report showing:

- (1) Name and address of the pipeline company and pipeline operator filing the report and
- (2) All accidents or incidents involving its pipeline facilities that occurred during the preceding twelve months involving personal injury requiring hospitalization, fatality, or property damage exceeding one thousand dollars (\$1000.00), together with a summary of the pipeline company's investigation as to the cause and circumstances surrounding such accident or incident.
- (3) A summary of the corrective action(s) taken and corrective action(s) planned to be taken to rectify the accident or incident.

(b) All information, notices and reports (including shape files) provided by pipeline companies, pipeline operators or other persons to the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the North Dakota Industrial Commission, the North Dakota Public Service Commission, the North Dakota Department of Health and other federal and state agencies pertaining to the safety of pipelines facilities located within the exterior boundaries of the Reservation shall be provided to the MHA Pipeline Authority.

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(c) The information and reports referenced in subsection (b) shall be provided to the MHA Pipeline Authority concurrent with the time it is provided to the relevant federal or state agency. Such information, including portions claimed to be confidential or privileged shall be submitted to MHA Pipeline Authority. To the extent requested by the pipeline company and pipeline operator, the MHA Pipeline Authority may agree to maintain the confidentiality of such information.

(d) The MHA Pipeline Authority is authorized to require pipeline companies and pipeline operators to periodically provide incident reports and other reports and information.

§ ___-5.4. Effect of Chapter.

Nothing in this Chapter shall affect the common law or statutory tort liability of any person.

SECTION 6. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.

§ ___-6.1. Hearings.

To carry out the purposes of this Chapter, the MHA Pipeline Authority is authorized to conduct conferences, formal and informal hearings, to make findings of fact and conclusions of law, and to enter orders with respect to any matters or issues that may arise under this Chapter.

§ ___-6.2. Burden of Proof.

The burden of proof on any matter shall be on the pipeline company.

§ ___-6.3. Regulations; Rules of Practice and Procedure.

(a) The MHA Pipeline Authority shall prescribe standards, guidelines, and regulations as may be needed to further implement this Chapter. In doing so, it may adopt, as a matter of tribal law and policy, relevant federal and state regulations covering pipelines. The MHA Pipeline Authority shall also prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful.

(b) In the investigations, preparations, and hearings of cases, the MHA Pipeline Authority shall not be bound by the technical rules of pleadings and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matter before it.

§ ___-6.4. Testimony; Subpoena; Tribal Court.

(a) The MHA Pipeline Authority shall, either as the MHA Pipeline Authority or by any of its members, or by designated employees, subpoena witnesses, take testimony, administer oaths to any witness in any proceeding or examination instituted before or conducted by it with reference to any matter within its jurisdiction hereunder.

(b) In all hearings or proceedings before the MHA Pipeline Authority or its designated employees, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing within the Reservation; and in the case of disobedience to a subpoena or other

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process, the MHA Pipeline Authority or any party to the proceedings before the MHA Pipeline Authority may invoke the aid of the tribal court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents.

(c) The tribal court, in case of refusal to obey a subpoena issued to any person or other witness, shall issue an order requiring such person or other witness to appear before the MHA Pipeline Authority or designated employees and produce books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the tribal court may be punished by such court as contempt thereof. A claim that such testimonial evidence may intend to incriminate the witness giving the same shall not excuse any witness from testifying, but such witness shall not be prosecuted by MHA for any offense concerning which he is compelled hereunder to testify.

§ ___-6-5. Enforcement of Orders.

(a) The MHA Pipeline Authority shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this Chapter without distinction based on the interstate or intrastate character of the person, thing or activity to which such rules and regulations apply.

(b) An order issued by the MHA Pipeline Authority is final when issued. A request for reconsideration or review to the MHA Pipeline Authority or to the tribal court by a party does not stay the action required under the order unless the MHA Pipeline Authority or the tribal court provides otherwise. The MHA Pipeline Authority can compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in in tribal court.

§ ___-6-6. Penalties.

(a) Any pipeline company, pipeline operator or person who violates any provision of this Chapter or any valid standard, guideline, regulation or order issued thereunder is subject to a civil penalty to be imposed by the MHA Pipeline Authority not in excess of seventy-five thousand dollars (\$75,000.00) for each violation for each day the violation persists: *Provided*, That the maximum aggregate civil penalty may not exceed seven million five hundred thousand dollars (\$7,500,000.00) per year for any related series of violations. At its discretion, the MHA Pipeline Authority may make recommendations to the Tribal Business Council regarding issuance of fines.

(b) Any civil penalty may be reduced or compromised by the MHA Pipeline Authority. In determining the amount of penalty, or the amount agreed upon in compromise, the MHA Pipeline Authority shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of the violation.

(c) Civil penalties collected by the MHA Pipeline Authority under this section shall be submitted to the MHA Nation.

(d) Civil penalties assessed under this section are exclusive of and may be in addition to:

(1) Penalties and fines under state and federal laws and other laws of the MHA Nation.

(2) The payment of damages.

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(3) Reimbursement to the MHA Nation of clean-up and remediation costs.

(4) Other liabilities.

(e) A pipeline company and pipeline operator may request an opportunity to present additional data, facts, and information to the MHA Pipeline Authority or the Tribal Business Council relating to penalty amounts assessed or required action under this subsection.

SECTION 7. FUNDING.

§__-7-1. Annual Operation Fee.

(a) Every pipeline company and pipeline operator subject to this Chapter shall pay an annual operation fee, regardless of the number of pipelines or acreage encumbered., The amount of such fees shall be fixed periodically by the MHA Pipeline Authority, and will be assessed upon each pipeline company or pipeline operator as an annual operation fee. The current operation fees shall be assessed, as follows:

(1) Gathering Lines – An annual flat fee of \$10,000.00;

(2) Flow Lines – An annual flat fee of \$10,000.00, provided that such fees shall not be passed onto the Allottee landowners.

(b) Such sums collected under subsection (a) of this section shall be paid to the [MHA Pipeline Authority], and kept as a special fund, designated the [MHA] Pipeline Safety Fund, to be appropriated as provided by law for the purpose of paying the salaries, compensation, costs and expenses of its employees to the extent of the employees' direct involvement in the enforcement of the provisions of this article. Any balance in said fund at the end of any fiscal year shall remain in said fund and may be appropriated as provided in this subsection.

(c) The MHA Pipeline Authority shall periodically make recommendations to the Tribal Business Council regarding changes to the per annum revenue requirements.

(d) This subsection shall not apply to transmission pipelines traversing the FBIR, the fees of which are negotiated into specific agreements with the MHA Nation.

SECTION 8. JUDICIAL REVIEW; NATURE OF POWERS.

§__-8-1. Appeal from MHA Pipeline Authority's Action.

(a) Any party feeling aggrieved by the entry of a final order by the MHA Pipeline Authority, affecting him or it, may present a petition in writing to the [tribal court], within thirty (30) days after the entry of such order, praying for the suspension of such final order. The petitioner shall deliver a copy of such petition to the Director of the MHA Pipeline Authority before presenting the same to the tribal court or the judge.

(b) The tribal court or judge shall fix a time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than five (5) days after its presentation; and

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notice of the time and place of such hearing shall be forthwith delivered to the Director of the MHA Pipeline Authority, so that the MHA Pipeline Authority may be represented at such hearing by one or more of its members or by counsel.

(c) If the tribal court or the judge after such hearing be of the opinion that a suspending order should issue, the tribal court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable.

(d) For such hearing the MHA Pipeline Authority shall file with the clerk of the tribal court all papers, documents, evidence and records or certified copies thereof as were before the MHA Pipeline Authority at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The MHA Pipeline Authority shall file with the tribal court four (4) days before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right.

§__-8-2. MHA Pipeline Authority's Powers Additional in Nature.

The powers conferred and duties imposed upon the MHA Pipeline Authority by this Chapter are in addition to, and not in derogation of, any other powers conferred and duties imposed upon the MHA Pipeline Authority by the Tribal Business Council.