Prairie Island Indian Community

Tribal Occupational Safety and Health Ordinance[1]

Table of Contents

Section 1. Short Title..... 1
Section 2. Statement of Purpose, Findings, and Authority..... 1
Section 3. Definitions..... 1
Section 4. Applicability..... 2
Section 5. Duties of the Administrator..... 2
Section 6. Regulations..... 3
Section 7. Workplace Compliance and Inspections..... 5
Section 8. Variances..... 7
Section 9. Violations..... 10
Section 10. Appeal of Administrative Action..... 14
Section 11. Discrimination Against Employee Prohibited..... 15
Section 12. Records..... 15
Section 13. Miscellaneous Provisions..... 17

[1] Note of Adoption: The Community Council adopted this Ordinance on July 24, 2024, by Resolution Number 24-7-24-193.

Section 1. Short Title. This Ordinance shall be known and may be cited as the Prairie Island Indian Community Tribal Occupational Safety and Health Ordinance.

Section 2. Statement of Purpose, Findings, and Authority.

a. Purpose. In the public interest and for the welfare of the Prairie Island Indian Community ("Community"), and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every person working within the jurisdiction of the Prairie Island Indian Community, the Prairie Island Indian Community Council ("Community Council") declares that the purpose of this Ordinance is to create, maintain, continue, and enhance the safety and health program of the Prairie Island Indian Community, which shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).

b. Findings.

1. The Community Council finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits.

2. The Community Council finds that the safety, health, and welfare of the Community, its employees, and all those working within its jurisdiction will be advanced and protected by an Ordinance that expressly recognizes and memorializes protections for safe and healthful working conditions.

c. Authority. This Ordinance is enacted by the Community Council as the governing body of the Community and pursuant to the inherent authority of the Community to regulate activities, govern conduct, and provide for the safety of those within the jurisdiction of the Community.

Section 3. Definitions.

a. "Administrator" or "Authorized Representative" means the Occupational Safety Manager of the Community or an employee, agent, or officer of the Administrator authorized by the Administrator to undertake actions consistent with the terms of this Ordinance.

b. "Community" means the Prairie Island Indian Community in the State of Minnesota, a federally recognized Indian Tribe.

c. "Community Council" means the constitutionally authorized governing body of the Community, also referred to as "Tribal Council."

d. "Employee(s)" means a Person employed in the business of their Employer whether by way of manual labor or otherwise, and every Person within the jurisdiction of the Community who is engaged in the employment of or who is working under an independent contract, the essence of which is their personal labor for an Employer under this Ordinance, whether by way of manual labor or otherwise.

e. “Employer(s)” means any Person, firm, corporation, partnership, business trust, legal representative, or other business or governmental entity which engages in any business, industry, profession, or activity within the jurisdiction of the Community employing one or more Employees or contracting with one or more Persons, the essence of which is the personal labor of such Person or Persons. Each business owned by the Community shall be considered a separate Employer for the purposes of this Ordinance.

f. “General Counsel” means the General Counsel of the Community or his or her designee.

g. “OSHA” means the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).

h. “Person(s)” means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of Persons.

i. “Safety and Health Standard(s)” means a standard that requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe and healthful employment and places of employment.

j. “Safety Advisory Board” means the administrative body responsible for hearing administrative appeals of the actions of the Administrator, the composition of which shall be determined by policy adopted by the Administrator.

k. “Tribal Court” or “Court” means the Prairie Island Mdewakanton Dakota Community Tribal Court.

l. “Workplace(s)” means any plant, yard, premises, room, or other place where an Employee or Employees are employed whether by way of manual labor or otherwise over which the Employer has the right of access or control.

m. “Working Day” means a calendar day, except Saturdays, Sundays, and all tribal government holidays for the purposes of the computation of time within which an act is to be done under the provisions of this Ordinance, which shall be computed by excluding the first Working Day and including the last Working Day.

Section 4. Applicability. This Ordinance shall apply with respect to employment performed in any Workplace within the jurisdiction of the Community.

Section 5. Duties of the Administrator.

The Administrator shall:

a. Provide a process for the preparation, adoption, amendment, or repeal of regulations of Safety and Health Standards governing the conditions of employment of general and special application in all Workplaces, ensuring that the regulations contain at least the minimum standards adopted or recognized by the United States Secretary of Labor under the authority of the OSHA; and

b. Provide for the implementation and enforcement of occupational safety and health regulations; and

c. Provide a method of encouraging Employers and Employees in their efforts to reduce the number of safety and health hazards at their Workplaces and stimulate Employers and Employees to institute new, and perfect existing, programs for providing safe and healthful working conditions; and

d. Provide for appropriate reporting procedures by Employers with respect to information relating to conditions of employment which will assist in achieving the objectives of this Ordinance; and

e. Provide for the frequency, method, and manner of the making of inspections of Workplaces without advance notice; and

f. Provide for the publication and dissemination to Employers and Employees, and posting where appropriate by Employers, of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this Ordinance; and

g. Provide for the establishment of new programs, and the modification and expansion of existing programs, for occupational safety and health education for Employers and Employees; and

h. Institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with Employers and Employees with recommendations including methods to abate violations relating to the requirements of this Ordinance and all applicable Safety and Health Standards and regulations promulgated pursuant to the authority of this Ordinance; and

i. If directed to do so by the Community Council, provide, by regulation consistent with other Community laws, a schedule of fees and charges to be paid by each Employer subject to this Ordinance, the collection of which shall be for the purpose of covering an Employer's pro rata share of the expenses for enforcing and administering this Ordinance.

Section 6. Regulations.

a. Minimum Standards. The Community hereby adopts by reference the standards prescribed by the OSHA and those adopted or recognized by the United States Secretary of Labor under the authority of the OSHA regulations 29 C.F.R. Parts 1910 and 1926 to ensure the safety of Employees. All future regulations adopted by the Community shall comply with these minimum standards set by the OSHA, but may be more protective of Employee safety and health. The adoption of such regulations is not intended to and does not waive the Community's immunity from suit in any state or federal forum, whether administrative or judicial, or in any other forum except as expressly provided in this Ordinance, nor does the Community by adopting such regulations concede that they would apply to the Community in the absence of such adoption. To the extent that this Ordinance and the regulations promulgated pursuant to this Ordinance establish a process or procedure different from that in the OSHA or its implementing regulations, this Ordinance and the Community's regulations shall govern. In the absence of future regulations adopted by the Administrator, the

standards prescribed by the OSHA and those adopted or recognized by the United States Secretary of Labor under the authority of the OSHA regulations 29 C.F.R. Parts 1910 and 1926 shall apply.

b. Authority and Procedure for Adoption, Modification, and Repeal.[2]

1. The Administrator may make, adopt, modify, and repeal regulations governing Safety and Health Standards for conditions of employment as authorized by this Ordinance, provided that the regulations adhere to the minimum standards established by the OSHA. Minimum standards adopted at the federal level pursuant to the OSHA after adoption of this Ordinance shall be implemented and enforced by the Administrator, unless the Administrator adopts a comparable regulation within six (6) months. The Administrator shall have discretion to implement and enforce emergency temporary standards adopted at the federal level pursuant to the OSHA.

2. The Administrator, in the promulgation of regulations under the authority of this Ordinance and in the enforcement of the regulations adopted under Section 6(a), is authorized to establish Safety and Health Standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this Ordinance or those that are a national or accepted federal standard. In adopting Safety and Health Standards for conditions of employment, the Administrator shall solicit and give due regard to all recommendations by any Employer, Employee, or labor representative of Employees.

3. The Administrator shall make the regulations adopted pursuant to this Section publicly available.

4. Any Safety and Health Standard adopted by regulation of the Administrator shall, where appropriate, prescribe the use of labels or other forms of warning to insure that Employees are apprised of all hazards to which they may be exposed, relevant symptoms, appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, the regulations shall prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards, and shall provide for monitoring or measuring Employee exposure at locations and intervals, and in a manner as may be reasonably necessary for the protection of Employees. In addition, where appropriate, the regulations shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the Employer or at the cost of the Employer, to Employees exposed to such hazards in order to most effectively determine whether the health of the Employees is adversely affected by exposure to hazards. In the event that the medical examinations are in the nature of research, as determined by the Administrator, such examinations may be furnished at the expense of the Community. The results of the examinations or

[2] Note of Amendment: The Community Council amended this subsection on September 17, 2025, by Resolution Number 24-9-17-178, to streamline the process for adopting regulations.

tests shall be furnished only to the Administrator, and, at the request of the Employee, to their physician; or as otherwise required by law.

5. Whenever the Administrator adopts by regulation any Safety and Health Standard, the Administrator may at the same time provide by regulation the effective date of the standard which shall not be less than thirty (30) days, except for emergency regulations. Any regulation having a delayed effectiveness in excess of sixty (60) days from the date of adoption may only be made upon a finding by the Administrator that the delay is reasonably necessary to afford the affected Employers an opportunity to make changes in methods, means, or practices to meet the requirements of the adopted regulation. Temporary orders granting a variance may be utilized by the Administrator in lieu of the delaying the effectiveness of an adopted regulation.

Section 7. Workplace Compliance and Inspections.

a. Compliance by Employers with General Safety Standards. Each Employer shall:

1. Furnish to each Employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to the Employees, provided that no citation or order assessing a penalty shall be issued to an Employer solely under the authority of this subsection, except where no applicable regulation exists under the OSHA or has been adopted by the Administrator covering the unsafe or unhealthful condition of employment at the Workplace; and

2. Comply with the regulations and orders promulgated under this Ordinance.

b. Compliance by Employees with General Safety Standards. Each Employee shall comply with the provisions of this Ordinance and all regulations and orders issued pursuant to the authority of this Ordinance that are applicable to the Employee's own actions and conduct in the course of employment.

c. Right of Administrator to Conduct Inspections.

1. The Administrator or an Authorized Representative, in carrying out the duties of the Administrator under this Ordinance, upon the presentation of appropriate credentials to the Employer's owner, manager, operator, or agent in charge, is authorized:

A. to enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, or Workplace where work is performed by an Employee of an Employer; and

B. to inspect, survey, and investigate during regular working hours and at other reasonable times and, within a reasonable manner, any such Workplace and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such Employer, owner, operator, agent, or Employee.

2. The Administrator's or an Authorized Representative's authority to conduct investigations under this Ordinance shall include the authority to issue informal investigatory inquiries to Employers when appropriate without physical inspection. The Administrator or an Authorized Representative may consider the results of informal investigatory inquiries in determining whether an inspection is warranted.

3. The Administrator's or an Authorized Representative's authority to conduct investigations under this Ordinance shall include the authority to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the Tribal Court. In the case of failure or refusal by any Person to obey such an order of the Administrator, the Tribal Court shall have jurisdiction to issue an order requiring that Person to appear to produce evidence and to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the Court may be punishable by the Tribal Court as contempt.

d. Right of Employees to Request Inspections. Any Employee or representative of Employee(s), who in good faith believes that a violation of a Safety and Health Standard promulgated under the authority of this Ordinance exists that threatens physical harm to Employees, or that an imminent danger to such Employees exists, may request an inspection of the Workplace by giving notice to the Administrator or an Authorized Representative of the violation or danger. The requirements for the notice are as follows:

   1. Any notice under this section shall be in writing, set forth with reasonable particularity the grounds for the notice, and be signed by the Employee or representative of the Employee(s).

   2. A copy of the notice shall be provided to the Employer or the Employer's authorized agent no later than at the time of inspection, except that, upon the request of the Person giving such notice, his or her name and the names of individual Employees referred to in the notice shall not appear in the copy provided to the Employer or on any record published, released, or made available pursuant to any provision of this Ordinance.

   3. If, upon receipt of such notification, the Administrator or an Authorized Representative determines that there are reasonable grounds to believe that a violation or danger exists, the Administrator or an Authorized Representative shall make a special inspection as soon as practicable. If the Administrator or an Authorized Representative determines there are no reasonable grounds to believe that a violation or danger exists, the Administrator or an Authorized Representative shall notify the Employer and the Employee or representative of the Employee(s) in writing of the determination and the reasons.

   4. Prior to or during any inspection of a Workplace, any Employee or representative of the Employee(s) may notify the Administrator or an Authorized Representative

responsible for conducting the inspection, in writing, of any violation of this Ordinance which there is reason to believe exists in the Workplace.

5. The Administrator may, by regulation, establish procedures for informal review of any refusal by the Administrator or an Authorized Representative to conduct an inspection with respect to an alleged violation. Until a regulation under this section is adopted, an Employee may request in writing that the Tribal Administrator review such decision. If the Tribal Administrator on review determines that an inspection should have occurred, the Administrator or an Authorized Representative shall conduct an inspection of the Workplace as soon as practicable.

d. Right of Employer and Employee to Representation at Inspections. A representative of the Employer and a representative authorized by the Employee(s) shall be given an opportunity to accompany the Administrator or an Authorized Representative during the physical inspection of any Workplace for the purpose of aiding such inspection. Where there is no authorized Employee representative, the Administrator or an Authorized Representative shall consult with a reasonable number of Employees concerning matters of health and safety in the Workplace. The Administrator may adopt procedural regulations to implement the provisions of this Section.

Section 8. Variances.

a. Order Granting Temporary Variance.

1. An Employer may apply to the Administrator for an order granting a temporary variance from any Safety and Health Standard under the authority of this Ordinance.

2. An application for an order under this subsection shall contain:

A. A specification of the Safety and Health Standard or portion thereof from which the Employer seeks a temporary variance;

B. A representation by the Employer, supported by proof from qualified Persons having first-hand knowledge of the facts as represented, that the Employer is unable to comply with the Safety and Health Standard or portion thereof and a detailed statement of the reasons;

C. A statement of the steps the Employer has taken and will take, with specific dates, to protect Employees against the hazard covered by the Safety and Health Standard;

D. A statement as to when the Employer expects to be able to comply with the Safety and Health Standard or portion thereof and what steps have been taken and will be taken, with dates specified, to come into compliance with the Safety and Health Standard; and

E. A certification that the Employer, by the date of mailing or delivery of the application to the Administrator, has informed the Employees of the application by providing a copy to the Employees or their authorized

representative, by posting a copy of such application in a place or places reasonably accessible to all Employees, or by other appropriate means of notification, and by mailing a copy to the authorized representative of such Employees. The certification shall specify the manner in which the Employees have been informed.

F. A certification that the Employer, by the date of mailing or delivery of the application to the Administrator, has advised the Employees or their authorized representative of their right to request a hearing on the Employer's application for a temporary variance. The notice to Employees shall be writing and specify the process for requesting a hearing and date by which that request must be made. The certification shall be provided to the Employees or their authorized representative in the same manner as the certification above in Section 8(a)(2)(E) and specify the manner in which the Employees have been informed. The procedures for requesting a hearing under this subsection shall be established by the Administrator in the regulations.

3. Orders under this subsection shall be granted only if the Employer files an application which meets the requirements of Section 8(a)(2) and establishes that:

   A. the Employer is taking all available steps to safeguard Employees against the hazards covered by the Safety and Health Standard; and

   B. the Employer has an effective program for coming into compliance with the Safety and Health Standard as quickly as practicable; and

   C. the Employer is unable to comply with the Safety and Health Standard because:

      i. professional or technical personnel or the materials and equipment needed to come into compliance with the Safety and Health Standard are unavailable; or

      ii. necessary construction or alteration of facilities cannot be completed by the effective date of the Safety and Health Standard.

4. Orders under this subsection shall prescribe the practices, means, methods, operations, and processes that the Employer must adopt and use while the order is in effect and state in detail the program for coming into compliance with the Safety and Health Standard.

5. Orders under this subsection may be granted only after notice to Employees and an opportunity for a hearing conducted by the Administrator, if a hearing is requested by the Employer or any affected Employee. The name of any affected Employee requesting a hearing under the provisions of this subsection is confidential and shall not be disclosed without the consent of such Employee. The Administrator may issue an interim order to be effective until a determination is made or a decision rendered if a hearing is demanded.

6. No order under this subsection maybe in effect for longer than the period needed by the Employer to achieve compliance with the Safety and Health Standard or one year, whichever is shorter, except that such an order may be renewed not more than twice, provided that the requirements of this subsection are met and an application for renewal is filed at least ninety (90) days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty (180) days.

b. Order Granting Permanent Variance.

1. An Employer may apply to the Administrator for an order granting a permanent variance from any Safety and Health Standard under the authority of this Ordinance.
2. An application for an order under this subsection shall contain the same information required under Section 8(a)(2) of this Ordinance with the exception of the statement required under Section 8(a)(2)(D).
3. Orders under this subsection shall be granted only if the Employer files an application which meets the requirements of Section 8(b)(2) and if, after opportunity for an inspection and a hearing, if requested, the applicant has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the Employer will provide employment and places of employment to the Employees which are as safeand healthful as those which would exist if the Employer complied with the Safety and Health Standard(s) from which the permanent variance is sought.
4. Orders under this subsection shall prescribe the conditions the Employer must maintain, and the practices, means, methods, operations, and processes that must be adopted and utilized to the extent they differ from the Safety and Health Standard in question.
5. Orders under this subsection may be granted only after notice to Employees and an opportunity for a hearing conducted by the Administrator if a hearing is requested by the Employer or any affected Employee. The name of any affected Employee requesting a hearing under the provisions of this subsection is confidential and shall not be disclosed without the consent of such Employee. The Administrator may issue an interim order to be effective until a determination is made or a decision rendered if a hearing is demanded.
6. Any time after six (6) months has elapsed from the date of the issuance of the order granting a permanent variance, the Administrator may modify or revoke the order upon application of an Employer, affected Employee, or on the Administrator's own motion, with notice to the Employees as prescribed in Section 8(a)(2)(E) and (F).

Section 9. Violations.

a. Citations.

1. If, upon inspection or investigation, the Administrator or an Authorized Representative believes that an Employer has violated any Safety and Health Standard adopted under Section 6(a) or 7(a)(1), or any Safety and Health Standard adopted by the Administrator pursuant to this Ordinance, or the conditions of any order granting a variance pursuant to this Ordinance, the Administrator shall issue a citation to the Employer within the time provided for below in Section 9(a)(5).

2. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statute, standard, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

3. Each citation shall include notice that anyone impacted by the citation has fifteen (15) Working Days from notice of the citation to notify the Administrator of an intent to appeal as provided for in Section 10 of this Ordinance.

4. Each citation shall be sent to the Employer by certified mail, and a copy or copies of each citation shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the Administrator.

5. No citation may be issued under this subsection after the expiration of six (6) months following a compliance inspection, investigation, or survey revealing any such violation.

6. The Administrator may prescribe procedures for the issuance of a notice in lieu of a citation with respect to *de minimis* violations that pose no immediate threat to the health or safety of Employees.

b. Citations for Dangerous Conditions.

1. If, upon inspection or investigation, the Administrator or an Authorized Representative believes that an Employer has violated any Safety and Health Standard adopted under Section 6(a), the standard set forth under Section 7(a)(1), or any Safety and Health Standard adopted by the Administrator pursuant to this Ordinance, or the conditions of any order granting a variance pursuant to this Ordinance, the violation of which is such that there is a substantial probability that death or serious physical harm could result to any Employee, the Administrator or an Authorized Representative shall issue a citation, and may issue an order immediately restraining any such condition, practice, method, process, or means in the Workplace.

2. Any order issued pursuant to this subsection may require that steps be taken as necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where danger exists, except individuals whose presence is necessary to avoid, correct, or remove the

danger or to maintain the capacity of a continuous process operation so that normal operations may be resumed without a complete cessation of operations or, where a cessation of operations is necessary, to permit operations to be accomplished in a safe and orderly manner.

3. In addition, if any machine or equipment, or any part thereof, is in violation of any Safety and Health Standard adopted under Section 6(a), the standard set forth under Section 7(a)(1), or any Safety and Health Standard adopted by the Administrator, and the operation of the machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any Employee, and an order of immediate restraint of the use of the machine or equipment has been issued under this subsection, the use of the machine or equipment is prohibited and a notice to that effect shall be attached to the order by the Administrator or an Authorized Representative.
4. Whenever the Administrator or an Authorized Representative concludes that a condition of employment described in this subsection exists in any Workplace, the Administrator or an Authorized Representative shall promptly inform the affected Employers and Employees of the danger.
5. Any time a citation, or a citation and order, is issued by the Administrator or an Authorized Representative pursuant to this subsection, the Administrator may, in addition, request that the General Counsel petition the Tribal Court for a temporary restraining order or such other relief as appropriate under the circumstances.
6. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statute, standard, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.
7. Each citation shall include notice that anyone impacted by the citation has fifteen (15) Working Days from notice of the citation to notify the Administrator of an intent to appeal as provided for in Section 10 of this Ordinance.
8. Each citation shall be sent to the Employer by certified mail, and a copy or copies of each citation shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the Administrator.
9. No citation may be issued under this subsection after the expiration of six (6) months following a compliance inspection, investigation, or survey revealing any such violation.

c. Order to Enjoin Dangerous Conditions.

1. In addition to and after having invoked the powers of restraint vested in the Administrator as provided in Section 9(b), the Tribal Court shall have jurisdiction, upon petition of the Administrator through the General Counsel, to enjoin any condition or practice in any Workplace where there is a substantial probability that

death or serious physical harm could result to any Employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in this Ordinance.

2. Any order issued under this subsection may require that steps be taken as necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where the danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation so that normal operation may be resumed without a complete cessation of operations, or where a cessation of operations is necessary, to permit operations to be accomplished in a safe and orderly manner.

3. Upon the filing of a petition under Section 9(c)(1), the Tribal Court shall have jurisdiction to grant *ex parte* injunctive relief or a temporary restraining order pending the outcome of enforcement proceedings pursuant to this Ordinance, except that no temporary restraining order issued without notice shall be effective for a period longer than five (5) Working Days.

4. When the Administrator or an Authorized Representative concludes that a condition or practice described in this subsection exists in any Workplace, the Administrator shall promptly inform the affected Employers and Employees of the danger and may recommend to the General Counsel that relief be sought under this subsection.

5. If the Administrator arbitrarily or capriciously fails to invoke the powers of restraint vested in the Administrator as provided for in Section 9(b) or fails to seek relief under this subsection, any Employee who may be injured by reason of such failure, or the representative of such Employees, may bring an action against the Administrator in the Tribal Court for a *writ of mandamus* to compel the Administrator to seek an order or exercise his restraining authority under Section 9(b).

d. Civil Penalties.

1. An Employer who receives a citation for a serious violation for a dangerous condition, as described in Section 9(b), of any Safety and Health Standard adopted under Section 6(a), the standard set forth under Section 7(a)(1), any Safety and Health Standard adopted by the Administrator, or the conditions of any order granting a variance, shall be assessed a civil penalty for each violation. For the purposes of this subsection, a serious violation shall be deemed to exist if the citation is issued under Section 9(b), unless the Employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

2. An Employer who receives a citation for a violation of any Safety and Health Standard adopted under Section 6(a), the standard set forth under Section 7(a)(1), any Safety and Health Standard adopted by the Administrator, or the conditions of any order granting a variance, where such violation is specifically determined not to be of a serious nature as defined in Section 9(a), may be assessed a civil penalty

for each violation, unless such violation is determined to be *de minimis* by the Administrator.

3. An Employer who fails to correct a violation for which a citation has been issued under Section 9(a) or (b) within the period permitted for its correction, which shall not begin to run until the date of the final order or any review proceedings under this Ordinance initiated by the Employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty for each day during which the failure or violation continues.
4. An Employer who violates any of the posting requirements of this Ordinance, or any of the posting requirements of the regulations promulgated by the Administrator pursuant to this Ordinance related to Employee or Employee representative's rights to notice, shall be assessed a penalty for each violation.
5. An Employer who violates any of the posting requirements for the posting of informational, educational, or training materials, as required by this Ordinance or by the regulations adopted by the Administrator, may be assessed a penalty for each violation.
6. The Administrator or an Authorized Representative shall have the authority to assess all civil penalties provided in this subsection, giving due consideration to the appropriateness of the penalty with respect to the number of affected Employees of the Employer, the gravity of the violation, the size of the Employer's business, the good faith of the Employer, and the history of previous violations. The Administrator or an Authorized Representative may consult with the General Counsel to determine the amount of the penalty, but is not required to do so.
7. Civil penalties imposed under this Ordinance shall be paid to the Administrator for deposit in the General Fund, unless such penalty is assessed against the Community as an Employer, in which case civil penalties shall be deposited in an account designated for the Administrator for the purposes of administering and enforcing the requirements of this Ordinance. Civil penalties may be recovered in a civil action in the name of the Administrator brought in the Tribal Court.
8. The amount of the civil penalties to be assessed under this subsection shall be established by the Administrator in the regulations.
9. Each assessment of civil penalty shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statute, standard, regulation, or order alleged to have been violated and amount of the civil penalty. In addition, the assessment of civil penalty shall fix a reasonable time for payment to the Administrator per Section 9(d)(7).
10. Each assessment of civil penalty shall include notice to the Employer that it has fifteen (15) Working Days from notice of the assessment of civil penalty to notify the Administrator of an intent to appeal as provided for in Section 10 of this Ordinance.

Section 10. Appeal of Administrative Action.

a. Administrative Appeal.

1. Any Person impacted by a citation and/or assessment of civil penalty issued by the Administrator pursuant to Section 9 of this Ordinance including an Employer, Employee, representative of the Employees, or any other Person may appeal the citation and/or civil penalty within fifteen (15) Working Days of notice of the same by serving the Administrator, personally and/or by United States mail return receipt requested, with a Notice of Appeal that specifies what actions are contested and any evidence in support of the appeal.

2. If no impacted party timely serves the Administrator with a Notice of Appeal as provided herein, the citation and any applicable civil penalty shall be deemed a final order and not subject to review by any administrative body, court, agency, or other forum or body. Further, a Notice of Appeal that is not timely filed under this subsection shall result in dismissal of the Notice of Appeal with prejudice and without a hearing before the Safety Advisory Board.

3. Upon receipt of a Notice of Appeal, the Administrator shall immediately inform the Safety Advisory Board. The Safety Advisory Board shall hold a hearing on the appeal within fifteen (15) Working Days of receiving such notice, which shall be recorded electronically or by transcription.

4. The Safety Advisory Board shall develop procedures for holding the hearing that allows the appellant and the Administrator to present their respective positions regarding the appeal.

5. After conducting the hearing, the Safety Advisory Board shall prepare a written decision that upholds, reverses, or modifies the act(s) of the Administrator based on findings of fact and conclusions of law. The Safety Advisory Board shall provide its decision to the parties by certified mail with notice that the parties have fifteen (15) Working Days from receipt of the decision to file a Notice of Appeal with the Tribal Court. If within fifteen (15) Working Days, the parties fail to seek appeal with the Tribal Court, the decision of the Safety Advisory Board shall be deemed a final order and not subject to review by any administrative body, court, agency, or other forum or body.

b. Tribal Court Appeal.

1. The Notice of Appeal filed with the Tribal Court must allege one or more of the following with specific reference and citations to the record and to the decision of the Safety Advisory Board:

A. The Safety Advisory Board made findings of material fact that are not supported by the evidence;

B. The decision of the Safety Advisory Board is contrary to the law;

C. The Safety Advisory Board abused its discretion in issuing its decision; and/or

D. The Safety Advisory Board committed other prejudicial error.

2. Upon receipt of a Notice of Appeal from the decision of the Safety Advisory Board, the Tribal Court shall hold a hearing for appeal within fifteen (15) Working Days. If, after hearing the evidence and reviewing the decision of the Safety Advisory Board and the record, the Tribal Court determines that any of the grounds for appeal enumerated in Section 10(b)(1)(A) – (D) exist, the Court shall reverse the action and, where appropriate, remand the matter to the Administrator for further action consistent with the orders of the Court.
3. Receipt by the Tribal Court of a Notice of Appeal from an Employer or other Person which failed to seek appeal with the Safety Advisory Board within the time allowed by Section 10(a)(1) or failed to seek appeal with the Tribal Court within the time allowed by Section 10(b)(2) shall result in dismissal of the Notice of Appeal with prejudice and without a hearing before the Tribal Court.
4. The parties may appeal a decision of the Tribal Court pursuant to the Prairie Island Mdewakanton Dakota Community Judicial Code Rules of Civil and Appellate Procedures.

Section 11. Discrimination Against Employee Prohibited.

a. No Person shall discharge or in any manner discriminate against any Employee because the Employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this Ordinance, has testified or is going to testify in any proceeding, or has exercised on behalf of themselves or others any other right afforded by this Ordinance.

b. Any Employee who believes that they have been discharged or otherwise discriminated against in violation of this Section may, within thirty (30) days of the violation, file a complaint with the Administrator. Upon receipt of such a complaint, the Administrator shall investigate the complaint or refer it for investigation to a Person or department designated by the Administrator. If, upon investigation, it is determined that the provisions of this Section have been violated, the Administrator shall bring an action in the Tribal Court against the Person or Persons alleged to have committed the violation. Within ninety (90) days of the receipt of a complaint filed under this Section, the Administrator shall notify the complainant of a determination under this subsection.

c. If it is determined by the Administrator or designated Person or department that the provisions of this Section have not been violated, the Employee may institute the action in the Tribal Court on their own behalf within thirty (30) days of such determination. In any such action the Tribal Court shall have jurisdiction, for cause shown, to restrain violations of subsection (a) of this Section and order all appropriate relief including rehiring or reinstating the Employee to their former position with back pay.

Section 12. Records.

a. Confidentiality of Trade Secrets in Records. All information reported to or otherwise obtained by the Administrator or an Authorized Representative in connection with

any inspection or proceeding under the authority of this Ordinance, which contains or which might reveal a trade secret is confidential, except that such information may be disclosed to other officers or Employees concerned with carrying out this Ordinance, or when required by law in any proceeding under this Ordinance. In any such proceeding, the Administrator or the Court shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

b. Employer Records and Notice Obligations.

1. Each Employer shall make, keep, preserve, and make available to the Administrator records regarding activities relating to this Ordinance as the Administrator may prescribe by regulation as necessary or appropriate for the enforcement of this Ordinance or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this subsection, the regulations may require Employers to conduct periodic inspection. The Administrator may also issue regulations requiring that Employers, through posting of notices or other appropriate means, keep their Employees informed of their protection and obligations under this Ordinance, including the provisions of applicable Safety and Health Standards.

2. The Administrator may prescribe regulations requiring Employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment that do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

3. The Administrator may issue regulations requiring Employers to maintain accurate records of Employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide Employees or their representatives with an opportunity to observe monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each Employee or former Employee to have access to the records regarding their own exposure to toxic materials or harmful physical agents. Each Employer shall promptly notify any Employee who has been or is being exposed to toxic materials or harmful physical agents, in concentrations or at levels which exceed those prescribed by any applicable Safety and Health Standard adopted by the Administrator, including what corrective action is being taken.

4. Until regulations authorized under Section 6(b) are adopted, Employers shall comply with Employee education and notice requirements, record-keeping requirements, and reporting requirements adopted or recognized by the United States Secretary of Labor under the authority of the OSHA, except that all reports shall be made to the Administrator and all records shall be made available to the Administrator upon request.

c. Administrative Records. In furtherance of the objectives and purposes of this Ordinance, the Administrator shall develop and maintain an effective program of

collection, compilation, and analysis of industrial safety and health statistics. The Administrator or an Authorized Representative shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any Workplace subject to this Ordinance, in an effort to ascertain whether an injury or fatality occurred as the result of a violation of this Ordinance, or any Safety and Health Standard or order promulgated pursuant to this Ordinance or, if not, whether a Safety and Health Standard should be promulgated for application to such circumstances. The Administrator shall adopt regulations relating to the conducting and reporting of such investigations. An investigative report is confidential and shall only be available upon order of the Tribal Court after notice to the Administrator and an opportunity for hearing, provided that, the investigative reports shall be made available without the necessity of obtaining a court order to Employees of governmental agencies in the performance of their official duties, to the injured Employee or the injured Employee's legal representative or labor organization representative, or to the legal representative or labor organization representative of a deceased Employee who was the subject of an investigation, or to the Employer of the injured or deceased Employee or any other Employer or Person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence.

Section 13. Miscellaneous Provisions.

a. Authority to Contract with Other Regulators. The Administrator is authorized to enter into Memorandums of Understanding or other agreements with regulators including the Prairie Island Indian Community Gaming Commission, the Prairie Island Indian Community Cannabis Regulatory Commission, and others to ensure safe and healthful working conditions, including the roles and responsibilities of the Administrator and other regulators, the exchange of information between the Administrator and other regulators, and other terms as necessary to effect the purpose of such agreements. The Administrator is not authorized to alter its responsibilities under this Ordinance by these agreements.

b. Authority to Contract for Enforcement of Federal Act. The Administrator is authorized to adopt by regulation any provision reasonably necessary to enable the Community to qualify as a tribal plan under the OSHA to assume responsibility for the development and enforcement of occupational Safety and Health Standards in all Workplaces within the jurisdiction of the Community. The Administrator is authorized to enter into agreements with the United States and to accept on behalf of the Community grants of funds to implement the development and enforcement of this Ordinance and the OSHA, as amended.

c. Limited Waiver of Sovereign Immunity. The Community hereby waives its sovereign immunity from suit and the immunity of any arm, agency, Administrator, subdivision, enterprise, or entity of the Community for actions that this Ordinance expressly recognizes can be brought. The Administrator may bring claims under this Ordinance against any arm, agency, subdivision, enterprise, or entity of the Community to

enforce this Ordinance. Nothing in the Ordinance should be construed as authorizing any claim for monetary damages against the Administrator or the Community, except for civil penalties assesses against the Community under Section 9(d).

d. Severability. If any provision of this Ordinance or its application to any Person or circumstance is held invalid, the remainder of the Ordinance, or the application of the provision to other Persons or circumstances is not affected.

e. Effective Date. This Ordinance shall become effective upon adoption.