



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

ORDINANCE GR-04-14

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY REPEALING CURRENT TITLE 18, CHAPTER 2 AND ENACTING AN AMENDMENT TO TITLE 18, CHAPTER 2 OF THE GILA RIVER INDIAN COMMUNITY CODE

WHEREAS, the Gila River Indian Community Council (the "Community Council") is the governing body of the Gila River Indian Community (the "Community" or "GRIC"); and

WHEREAS, the Community Council is empowered through Article XV, § 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) ("Constitution") to promote and protect the health, peace, morals, education and general welfare of the Community and its members; and

WHEREAS, the Community Council is empowered through Article XV, § 1(a)(19) of the Constitution to enact ordinances and laws necessary or incidental to the exercise of the powers granted to the Community Council; and

WHEREAS, the power to enact ordinances and laws is an inherent function of self-government that the Community has exercised over the years; and

WHEREAS, on April 19, 1995, the Community Council, through Ordinance GR-04-95, adopted the 1995 Solid Waste Disposal Ordinance, which is now codified at Gila River Indian Community Code, Title 18, Chapter 2; and

WHEREAS, the Department of Environmental Quality desires to amend Title 18, Chapter 2 by repealing the 1995 Solid Waste Disposal Ordinance and enacting the Waste Management Ordinance; and

WHEREAS, the Community desires to continue to regulate and manage the increasing volume and variety of solid waste being generated on or brought to the Reservation; and

WHEREAS, traditional methods of solid waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources; and

WHEREAS, litter, illegal and open dumping within the exterior boundaries of the Reservation pose a threat to the environment and the quality of life of Community residents; and

WHEREAS, the Waste Management Ordinance prohibits open dumping and includes provisions for handling waste tires and hazardous waste, as well as provisions for the installation or operation of underground storage tanks; and

WHEREAS, the often inadequate and environmentally unsound existing methods of managing solid waste could lead to conditions that threaten the environment, as well as the public health, safety and welfare of Community members and residents of the Community, by contributing to land, air and water pollution, and to the general deterioration of the Community environment; and

WHEREAS, the Waste Management Ordinance further addresses issues involved with existing methods of managing solid waste by regulating solid waste transfer stations and commercial recycling facilities in requiring permits and providing for operating requirements; and

WHEREAS, the Legislative Standing Committee, Natural Resources Standing Committee, and Economic Development Standing Committee recommend enactment of the Waste Management Ordinance; and

WHEREAS, the Community Council has reviewed the attached Waste Management Ordinance and finds the Code to be in the best interest of the Community; and

WHEREAS, the Waste Management Ordinance has complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the 2009 Gila River Indian Community Code by publication in the *Gila River Indian News* and at all seven district service centers.

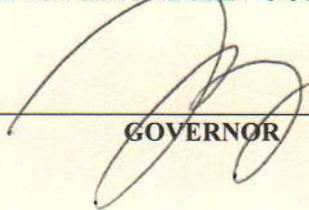
NOW, THEREFORE, BE IT ENACTED, that the Gila River Indian Community Council hereby amends the 2009 Gila River Indian Community Code by repealing current Title 18, Chapter 2, and enacts and codifies the new Title 18, Chapter 2, Waste Management Ordinance, which is attached to this ordinance, effective on the date enacted by the Community Council.

BE IT FINALLY ENACTED, that the Governor or, in the Governor's absence, the Lieutenant Governor is hereby authorized to take all the necessary steps to carry out the intent of this enactment.

CERTIFICATION

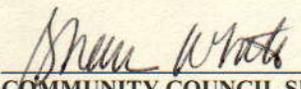
Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (18), (19), (b) (8), (10), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing ordinance was adopted on the **2nd** of **July 2014**, at a regular Community Council meeting held in **District 3, Sacaton, Arizona** at which a quorum of **14** Members were present by a vote of: **13** FOR; **0** OPPOSE; **1** ABSTAIN; **3** ABSENT; **0** VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



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JUL 10 2014
BUREAU OF INDIAN AFFAIRS
SACATON ARIZONA



WHAT YOU SHOULD KNOW ABOUT GRIC'S WASTE MANAGEMENT ORDINANCE

1. What Is The Purpose Of This Ordinance?

The Ordinance creates enforceable environmental standards for the storage, collection, transportation and disposal of all solid waste including hazardous waste within the Community. The Ordinance prohibits dumping or open burning of solid waste, and prohibits any person from importing waste to the Community or operating a landfill within the Community. It also regulates the handling, re-use, and disposal of waste tires.

2. Under What Authority Does The Community Adopt This Ordinance?

The Community regulates its own members through its sovereign authority as a tribe and nonmembers because, by engaging in the regulated activity on Community land, the nonmembers voluntarily agree to the Community's jurisdiction over them. In addition, because solid waste-related activities directly impact Community members' health and safety as well as the Community's environment and nonmember lessees voluntarily subject themselves to Community jurisdiction, the Community has sovereign jurisdiction over those activities, whether conducted by members or nonmembers of the Community. See *Montana v. United States*, 450 U.S. 544 (1981).

3. What Are The Key Points In The Ordinance?

- It prohibits dumping of solid waste.
- It prohibits open burning of solid waste.
- It requires all property owners to properly store and stockpile solid waste in appropriate containers for collection.
- It provides that the Community will arrange for the collection of solid waste, and prohibits collection by any non-authorized persons.
- It prohibits construction or operation of landfills within the Community.
- It prohibits any person from handling hazardous waste within the Community except in compliance with applicable Community ordinances and applicable federal regulations that are incorporated by reference.

- It requires that underground storage tanks be installed and maintained in compliance with Community ordinances and applicable federal regulations that are incorporated by reference.
- It requires that a permit from the Department of Environmental Quality be obtained before commencing commercial recycling operations in the Community, and that such operations comply with federal regulations.
- It prohibits the land application of biosolids, except biosolids generated by a duly permitted wastewater treatment facility.
- It prohibits any person from importing waste tires, operating a facility that physically, chemically, or mechanically alters waste tires, or collecting or storing more than 50 waste tires at the same time and location (except at permitted transfer stations).
- It establishes standards regulating locations at which between 10 and 50 waste tires are collected or stored, and requires registration of such locations with the Department of Environmental Quality.
- It establishes standards for the allowable re-use and disposal of waste tires.
- It requires that a permit from the Department of Environmental Quality be obtained before commencing operation of a solid waste transfer station.
- It provides a mechanism for the Community to recover costs expended in cleaning up contaminated sites from those responsible for the contamination.

4. How Is The Ordinance Enforced?

All persons must come into compliance with the Ordinance within 180 days of its enactment by the Community Council. There are enforcement actions that the Community can take in the event of a violation. These range from administrative enforcement (compliance orders) to judicial enforcement (injunctions, civil penalties) to criminal enforcement (prosecution under federal law).

5. Is There An Appeals Process?

A number of actions under the Ordinance are appealable to an administrative law judge. Appealable actions include issuance, denial or revocation of a permit, issuance of administrative orders and the imposition of administrative civil penalties. The administrative law judge is authorized to hold an administrative evidentiary hearing, and issue recommended findings of fact and conclusions of law. The final administrative decision is made by the Director of the Department of Environmental Quality but it is appealable to Community Court.

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CHAPTER 2. WASTE MANAGEMENT

ARTICLE I. FINDINGS AND PURPOSE

18.201. Authority.

A. The Community has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of Community members and all other persons on all lands within the exterior boundaries of the Community as necessary to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Community.

B. The authority to manage and regulate the storage, collection, transportation, handling, treatment and disposal of solid and hazardous waste in the Community inherently lies within the retained sovereign power of the Community.

C. The Community enacts this chapter under its inherent civil legislative, adjudicative and regulatory authority pursuant to the express delegation of authority by Congress under the Indian Reorganization Act (25 U.S.C. §§ 461 et seq.), which provided the Community authority to organize, adopt the Constitution and Bylaws of the Gila River Indian Community (1960) and to enact ordinances governing conduct within the exterior boundaries of the Reservation (25 U.S.C. § 476). The Community enacts this chapter to regulate certain activities within the Reservation as prescribed and to the fullest extent permitted under *Montana v. United States*, 450 U.S. 544 (1981). Further, separate from *Montana v. United States*, and pursuant to the Community's sovereign power to exclude nonmembers, the Community enacts this chapter to regulate certain activities occurring on tribal land within the Reservation and affirms the Community's adjudicatory authority over such certain activities occurring on tribal land within the Reservation as prescribed by *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011). The Community finds that non-members engaged in conduct or activities within the exterior boundaries of the Reservation pursuant to a lease agreement, contract, presence on the Reservation or other activity have voluntarily and explicitly agreed to the jurisdiction of the Community and are subject to regulation under the laws, ordinances and regulations of the Community. The Community finds that the activities regulated under this chapter, if left unregulated, pose an imminent threat to the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Community.

18.202. Scope.

A. Because any violations of this chapter will demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Community, this chapter shall apply to:

1. all persons within the exterior boundaries of the Reservation, without exception, including but not limited to, all Community members, and all other persons within the exterior boundaries of the Reservation, including

any Indian who is a member of another federally recognized Indian Tribe, all non-Indians, and any other person as defined under this chapter; and

2. all places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or real property interest of any kind held by any person as defined under this chapter.

B. Any person who is anywhere within the exterior boundaries of the Reservation, whether on trust or non-trust lands, must comply with, and is subject to this chapter; any guidance documents issued hereunder; all Community laws; and all orders of the Department and the Community Court. All such persons shall be deemed to have consented to the civil jurisdiction of the Community Court, and shall be subject to civil prosecution, penalties, damages, or any other civil remedies imposed or awarded by the Community Court for any violations of this chapter.

18.203. Findings.

The Community Council hereby finds as follows:

A. The increasing volume and variety of solid waste being generated on or brought to the Reservation, and the often-inadequate and environmentally unsound existing methods of managing such waste, could lead to conditions that threaten the environment as well as the public health, safety and welfare of Community members and residents of the Community by contributing to land, air and water pollution, to the production of flies, rodents and litter, to the waste of dwindling natural resources, and to the general deterioration of the Community environment.

B. Traditional methods of solid waste management may not meet future requirements for eliminating environmental pollution and conserving natural resources.

C. Litter and illegal dumping along roads and within the exterior boundaries of the Reservation pose a threat to the environment and the quality of life of Community residents. Failure to control this considerable problem adversely affects the health and welfare of the Community and its members, and interferes with Community traditional, religious and cultural activities.

D. Open dumping is particularly harmful to the public health and welfare, contaminates drinking water from underground and surface water supplies, and generally pollutes the land, air and water of the Community.

18.204. Purpose.

The purposes of this chapter are to:

A. Protect the health and safety of Community members and all other persons within the exterior boundaries of the Reservation;

B. Protect the cultural, social and economic stability of residential, agricultural, commercial, industrial, and environmentally sensitive lands and natural resources within the Community and the Reservation;

C. Protect the historical and cultural values and traditions of the Community;

D. Protect air, water, and land from solid waste pollution, including contamination of the Community's aquifers, groundwaters, surface waters, drinking water sources, and all other natural resources;

E. Prevent deterioration of the environment, quality of life, and well-being of all persons and wildlife within the exterior boundaries of the Reservation;

F. Provide and promote environmental protection and public health within the Reservation, and to regulate waste activities; and

G. Regulate and enforce environmental standards, ordinances, permit conditions, laws and regulations under this chapter, for the storage, collection, transportation and disposal of all waste within the exterior boundaries of the Reservation to the maximum extent authorized by law.

18.205. Sovereign Immunity.

A. Nothing in this chapter, nor any action, inaction or agreement of the Department, shall be construed as, or is intended to be, a waiver or modification of any sovereign immunity now enjoyed by the Community, or a consent by the Community to jurisdiction or suit against it.

B. The Department may enter into such contracts as are authorized by the Community Council, for the purpose of implementing or enforcing this chapter; provided that such contracts shall not be construed to be a waiver of the sovereign rights or immunities of the Community, or any Department, agency, entity, officer, employee, representative, or agent thereof.

ARTICLE II. DEFINITIONS

18.206. Definitions.

A. Unless otherwise provided, or unless the context clearly requires another definition, the definitions set forth in this section shall apply to the terms used throughout this chapter. Additional definitions sometimes appear in the specific sections to which they apply.

1. *Aquifer* means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

2. *Administrative law judge* or *ALJ* means an individual with experience and expertise in the law, appointed by the Governor, who sits as an

- administrative law judge, and conducts administrative hearings for appealable Department administrative actions.
3. *Administrative law judge decision* means the findings of fact, conclusions of law, and recommended decision issued by an administrative law judge.
 4. *Administrative compliance order* means a unilateral order issued by the Department without agreement from the responsible party. An administrative compliance order may include, but not be limited to; orders to comply with this chapter or permit requirements within a specified time limit; to cease and desist specified activities; or to take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation.
 5. *Appealable Department action* means an action that is subject to administrative appeal pursuant to this chapter.
 6. *Biosolids* means any solid, semi-solid, or liquid residue removed during the treatment of public or private domestic wastewater.
 7. *Chapter* means Title 18, Chapter 2 of the Gila River Indian Community Code.
 8. *CFR* means the United States Code of Federal Regulations as of July 1, 2010, except that the definition of solid waste in 40 CFR § 261.2 shall be that in effect prior to December 29, 2008.
 9. *Collection* means the physical aggregating of solid waste from its place of generation and includes all activities up to such time as the waste is delivered to a facility for transfer, processing, treatment, or disposal.
 10. *Commercial recycling* means any recycling activities conducted for commercial purposes.
 11. *Commercial recycling facility* means a facility where commercial recycling is conducted.
 12. *Community* means the Gila River Indian Community.
 13. *Community Council* means the legislative branch of the Gila River Indian Community as established in the Constitution and Bylaws of the Gila River Indian Community (1960).
 14. *Community Court* means the trial court of the Gila River Indian Community.
 15. *Consent order* means a bilateral administrative order issued with the complete written agreement of the responsible party and the Department.

16. *Construction and/or demolition debris* means solid waste derived from constructing, repairing, remodeling and demolishing of buildings, roadways and canal systems or other structures.
17. *Cultural resources* means movable or immovable objects, artifacts, sites, structures, canals, features and landscapes that have archaeological, paleontological, historical, architectural, religious, ceremonial, aesthetic, or other cultural significance, whether located above or below ground, or under water.
18. *Damages* means an injury, impaired use, destruction or loss of any person, property, natural resources and/or cultural resources.
19. *Department* means the Gila River Indian Community Department of Environmental Quality.
20. *Director* means the Executive Director of the Gila River Indian Community Department of Environmental Quality.
21. *Disposal* or *dispose of* means the discharge, abandonment, deposit, injection, dumping, littering, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment then or in the future, including without limitation impacting land, both surface and subsurface, emitting into the air, or discharged into any waters, including surface waters or groundwaters.
22. *EPA* or *USEPA* means the United States Environmental Protection Agency.
23. *Exterior boundaries* means the boundaries of the Gila River Indian Reservation as established and described by an Act of Congress on February 28, 1859, and executive orders entered on August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.
24. *Facility* means any building, land, structure, installation, equipment, device, conveyance, source, activity, practice, treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a solid waste, oil, or hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located. The term also means a location on Reservation land where a release of solid waste, oil, or a hazardous substance has occurred or where there is a threat of a release.

25. *Final administrative decision* means a decision by the Director that is subject to review by the Community Court pursuant to the provisions of this chapter.
26. *General Counsel* means the General Counsel of the Gila River Indian Community.
27. *Governor* means the Chief Executive Officer of the Gila River Indian Community, pursuant to the Constitution and Bylaws of the Gila River Indian Community, approved March 17, 1960.
28. *Green waste* means leaves, grass clippings, chipped or shredded wood, sawdust, tree or shrub clippings or other plant materials, when stored, disposed or used as feed stock for compost.
29. *Guidance document* means a document prepared by the Department that supplements this chapter. A guidance document may provide specific technical direction regarding the manner in which a person shall comply with this chapter. Guidance documents may be referred to or attached as conditions to permits. Such technical direction must either conform to or be no less stringent than this chapter. A guidance document may also provide direction as to how the Department interprets this chapter.
30. *Hazardous substance* means a substance on the list defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) of 1980, as amended, 42 U.S.C. § 9601(14), or any substance that may cause substantial damage to the environment, or substantial danger to present or future public health, safety or welfare.
31. *Hazardous waste* means a solid waste, or combination of solid wastes, with or without other materials including excavated or unexcavated soils, which
 - a. because of its quantity, concentration, or physical, or chemical, characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or
 - b. is a hazardous waste under CERCLA, or the Resource Conservation and Recovery Act (“RCRA”) of 1976, 42 U.S.C. § 6901 et seq., as either Act has been amended through July 1, 2010, and by any regulations promulgated thereunder through July 1, 2010, except that the definition of solid waste in 40 CFR § 261.2 shall be that in effect prior to December 29, 2008, including but not limited to any substance, material, smoke, gas, particulate

matter, or combination thereof containing asbestos or polychlorinated biphenyls; however, to the extent that asbestos and polychlorinated biphenyls are regulated under specific federal regulations, this chapter shall regulate them in a manner that is consistent with and no more stringent than the federal regulations; or

- c. is toxic, ignitable, reactive, or corrosive, as defined and regulated by the Community.
32. *Household waste* means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including but not limited to single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).
33. *Indian lands* or *Indian country* means:
- a. all lands within the limits of any Indian reservation or community under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation or community;
 - b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and
 - c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
34. *Landfill* means any discrete area of land or an excavation where solid waste is disposed via confinement with adequate controls to restrict access to or movement of such waste.
35. *Natural resources* includes but is not limited to land (surface and subsurface), fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and any other resource owned, managed, held in trust for, or controlled by the Community.
36. *Notice of violation* means a compliance tool to put a responsible party on notice that the Department believes that a violation of a provision of this chapter or a permit issued under this chapter has occurred.
37. *Open burning* means the combustion of any material without:
- a. control of combustion air to maintain adequate temperature for efficient combustion;

- b. containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
 - c. control of the emission of the combustion products.
38. *Open dump* means any facility or site within the Reservation where solid waste has been disposed of, which is not a permitted landfill, transfer station or commercial recycling facility.
39. *Owner or operator* means any person who owned, leased, subleased, operated, used, controlled or exercised significant control over the operation of a facility.
40. *Permit* means an authorization and license issued under this chapter.
41. *Permittee* means the holder of a permit under this chapter.
42. *Person* means any individual, trust, firm, association, partnership, Indian Tribe, Community chartered corporation or business, political subdivision, government agency, municipality, industry, public or private corporation, any legal entity or private enterprise, and includes members of the Community, all other non-member Indians, and all non-Indians.
43. *Petroleum* includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof.
44. *Pollution* means the unauthorized disposal of any solid waste or hazardous waste into the air, land (surface and subsurface), surface water or groundwater.
45. *Recycling* means the process of sorting, cleansing, treating, and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.
46. *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of solid waste, oil, or hazardous substances into the environment. The term “release” also includes, but is not limited to the abandonment or disposal of waste or the abandonment or discarding of barrels, containers and other receptacles containing any hazardous substance, oil or threat thereof.
47. *Remedial action* means those actions consistent with a temporary or permanent remedy taken instead of, or in addition to removal actions in the event of a release or threatened release of a solid waste, oil or hazardous substance into the environment. A remedial action shall

prevent or minimize the release of a solid waste, oil, or hazardous substance so that it does not migrate, impair uses or cause damage or harm, or impair use to present or future public health, safety, welfare or the environment. Remedial action includes, but is not limited to:

- a. such actions at the location of the release such as storage, confinement, containment, perimeter protection using dikes, trenches and associated materials, recycling or reuse, diversion, destruction, segregation of hazardous substances, oil or solid wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, public information, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment,
- b. offsite transport and offsite storage, treatment, destruction or secure disposition of solid waste, oil or hazardous substances and associated, contaminated materials, or
- c. such actions as may be necessary to monitor, assess, evaluate, investigate, or control a release or threat of release, either on-site or off-site, including remedial investigations, feasibility studies, health affects studies, long-term care of the facility or site, and groundwater monitoring.

48. *Remedial action costs* means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to, the costs of administration, assessment, investigation, legal or enforcement activities, contracts and health studies.
49. *Removal* means the cleanup or removal of solid waste, oil or a hazardous substance from a facility or the environment to address an immediately apparent threat to public health, safety, welfare, or the environment. It shall also mean the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, that may otherwise result from a release or threat of release. Removal also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened persons and actions taken under this chapter.
50. *Reservation* means and includes all lands of any kind within the exterior boundaries of the Gila River Indian Reservation, all lands outside such boundaries held in trust for the Community or any of its members by the United States, and any other land constituting Indian Country within the meaning of 18 U.S.C. § 1151 or any successor provision.

51. *Responsible party* means a person responsible for an activity or action subject to this chapter or the implementation of or compliance with a permit issued under this chapter.
52. *Solid waste* means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded or released material, including solid, liquid, semisolid, or contained gaseous material resulting from Community residential, industrial, commercial, mining, and agricultural operations from activities within or outside the Reservation, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. § 1342, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq. Solid waste includes litter, green waste, hazardous waste, and discarded or released asbestos, polychlorinated biphenyls, petroleum, and hazardous substances. Solid waste in combination with other materials, including unexcavated or excavated soils, is also a solid waste.
53. *SWDA* means the federal Solid Waste Disposal Act, as amended by RCRA, the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) of 1976, and any subsequent amendments.
54. *Transfer station* means a Community-permitted site at which solid wastes collected from off-site are concentrated or otherwise prepared for transport to a processing facility or land disposal site. A transfer station may be fixed or mobile.
55. *Underground storage tank* or *UST* means an underground storage tank, as that term is defined in 40 CFR § 280.12.
56. *Waste* means solid waste and hazardous waste.
57. *Waste tire* means a tire, shredded tire or shredded tire component that is no longer suitable for its original intended purpose because of wear, damage or defect.

ARTICLE III. AUTHORITY

18.207. General Powers and Duties of the Department.

The Department of Environmental Quality is the lead agency charged with regulating waste management in the Community, which includes implementing, administering, and enforcing this chapter pursuant to all of the powers and duties delegated to it herein. The Department is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity.

18.208. Hearings.

The Department may hold public or administrative hearings specifically provided for under this chapter.

18.209. Enforcement.

The Department has the power to enforce compliance with this chapter, as more specifically set forth in Article IX herein. Civil citations for violations of this chapter may also be issued by Community Law Enforcement officials, Tribal Rangers and Gila River Police Department officers commissioned by the Community for the specific purpose of enforcing this chapter.

18.210. Waste Management Program Fund.

A. The waste management program fund is hereby established.

B. The Department may use the waste management program fund to administer this chapter in accordance with the special revenue fund plan of operation and pursuant to an approved budget to include, but not limited to, purchasing of education and outreach materials, sampling and the laboratory testing of pesticide residue, compliance and enforcement, and the training of the Department's staff.

C. All fees and any monies collected as a result of violations of this chapter shall be deposited with the Community Treasurer to be credited to the waste program fund. The Department shall report annually to the Community Council on the sums deposited into the fund, including the sources and uses thereof. Any monies contained in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for appropriation as provided in this section.

18.211. Financial and Technical Assistance.

The Department is authorized to apply for Federal or State financial aid, training, and technical assistance, to implement the Community's waste management program.

18.212. Reports.

The Community Council may from time to time require the Department to prepare a report describing activities and accomplishments under this chapter, as well as suggested revisions to this chapter. The Department may recommend that specific actions be taken by the Community Council regarding waste management within the Reservation.

18.213. Investigations.

Upon complaint by any person which establishes reasonable grounds, or upon its own motion, the Department, or any of the persons listed in Section 18.209, may investigate the activities of any person who is suspected of violating any provision of this chapter or any permit conditions. The Department, and the persons listed in Section 18.209, shall have the authority, without reasonable notice, if necessary, to enter into the person's place of business, operation, or facility, to inspect any books or records of the person, to inspect any of the person's property, or sites of possible pollution, taking photographs and to take samples. When solid waste or hazardous waste is dumped or deposited in violation of this chapter, and three or more items in the solid waste and/or hazardous waste identify the same person as the owner or recipient of the waste, there shall be a rebuttable presumption that a person is responsible for the unlawful dumping.

18.214. Obstruction.

No person may willfully obstruct or interfere with any person in the performance of his or her duties under this chapter.

ARTICLE IV. PROHIBITIONS

18.215. Burning.

No person may cause open burning of any material within the exterior boundaries of the Reservation, except as the Department may specifically permit as authorized by the Gila River Indian Community Code, Title 18, Chapter 7, Air Quality Management Plan.

18.216. Collection.

The Community shall arrange for periodic collection of solid waste within the Reservation. No persons other than those designated by the Community shall collect solid waste or hazardous waste within the Reservation.

18.217. Commercial Recycling.

No person may commence or continue commercial recycling operations within the Reservation before registering with the Department on a form to be provided by the Department. Any person commencing or continuing commercial recycling operations within the Reservation must comply with all applicable provisions of the Community Code, as required under Article VI, and federal regulations.

18.218. Dumping.

No person may dispose of, dump, scatter, or place, or cause to be disposed of, dumped, scattered, or placed, any solid waste or hazardous waste as defined under this chapter, within the exterior boundaries of the Reservation, except at transfer stations.

18.219. Hazardous Waste Transfer Stations.

No person may construct or operate a hazardous waste transfer station within the exterior boundaries of the Reservation.

18.220. Hazardous Waste and Used Oil.

Subject to the following substitutions and exceptions, no person may generate, transport, treat, store, dispose, handle, manage, use, or re-use hazardous waste or used oil within the Reservation except in compliance with the federal regulations found at 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 273, and 279, which are hereby incorporated by reference as Community ordinances.

A. For purposes of this incorporation by reference, the term “Director” shall be substituted for the terms “Administrator,” “Regional Administrator,” and “State Director.”

B. 40 CFR Part 262, Subparts E, I, and J are not incorporated herein by reference.

C. Any notifications, submittals or reports required to be made to the EPA pursuant to the incorporated federal regulations shall simultaneously be made to the Department. In addition, if hazardous waste is generated in the Community, handled by a permitted facility in the Community, or imported to or exported from the Reservation, the generator must send a copy of the hazardous waste manifest (including the generator, transporter and destination facility signatures) to the Department within 45 days of the end of the month of shipment. The transporter(s) and the destination facility must send a copy of the completed hazardous waste manifest to the Department within 30 days of the end of the month of shipment.

D. Notwithstanding this incorporation by reference, no person may recycle or import for any purpose of recycling, the following substances, regardless of whether such substances are exempt from regulation as a hazardous waste under the incorporated federal regulations:

1. Spent lead acid batteries;
2. Waste pesticides that are listed in 40 CFR Part 261, Subpart D, or that exhibit one or more of the characteristics identified in 40 CFR Part 261, Subpart C;
3. Any used or spent equipment or other item that contains mercury;
4. Waste lamps that exhibit one or more of the characteristics identified in 40 CFR Part 261, Subpart C.

E. Before any person recycles hazardous wastes pursuant to the incorporated federal regulations, that person must register with the Department on a form to be provided by the Department.

18.221. Importing Waste.

Within the exterior boundaries of the Reservation, no person may import or dispose of or cause to be imported or disposed of solid waste or hazardous waste, including conditionally exempt small quantity generator waste, generated outside of the Reservation; except for facilities with written authorization to operate prior to the effective date of this chapter.

18.222. Improper Storage.

It is unlawful to store or accumulate solid waste in a manner that is a hazard to the public health, safety or the environment, as determined by the Department. The owner, agent or occupant of any dwelling, residence, premises or business establishment shall be responsible for the condition of said residence, premises or business establishment, and for the storage and stockpiling of all solid waste accumulated for appropriate collection. Solid waste shall be stored in durable, rust resistant, non-absorbent, water tight, rodent proof, and easily cleanable containers with a close fitting, insect tight cover, or other container or methods approved by the Department. No person shall place or deposit solid waste on any public street, road or alley within the Reservation, with the exception of placement for Community-approved cleanups or residential bulk trash pickup.

18.223. Improper Transportation.

No person may transport solid waste within the Reservation unless the solid waste is covered, tied or otherwise secured so waste will not be blown or dropped from the transport vehicle. No person may transport hazardous waste within the Reservation except in compliance with all applicable federal regulations incorporated by reference in Section 18.220 of this chapter.

18.224. Land application of biosolids.

No person may spray or spread biosolids onto the land surface, inject biosolids below the land surface, or otherwise incorporate biosolids into the soil. Biosolids generated by a duly permitted wastewater treatment facility may be spread and dried prior to off-site disposal.

18.225. Landfills.

No person may construct or operate a landfill within the exterior boundaries of the Reservation.

18.226. Underground Storage Tanks.

No person may install or operate any underground storage tank or underground storage tank system except in compliance with the federal regulations found at 40 CFR Part 280 as of July 1, 2010, which are hereby incorporated by reference as Community

Code. Any notifications, submittals or reports required to be made to EPA pursuant to 40 CFR Part 280 shall simultaneously be made to the Department.

ARTICLE V. WASTE TIRES

18.227. Waste Tires Prohibitions.

A. No person may import waste tires from outside the Reservation boundaries for any purpose.

B. No person may own or operate a facility that physically, chemically, or mechanically processes or alters waste tires.

C. No person may collect, handle, or store more than 50 waste tires at the same location at any one time, except at permitted transfer stations.

18.228. Waste Tire Collection, Handling, and Storage.

Any location at which more than 10 waste tires are collected, handled, or stored at any one time must comply with the following criteria:

A. Waste tires must be removed within six months.

B. The location shall stay in compliance with all Community and National Fire Codes and all Community and Department ordinances, rules and guidelines.

C. The location shall be maintained in a manner which will prevent the breeding or harboring of insects and rodents or other vectors.

D. All excessive debris, liquid and dirt shall be removed from the tires as the tires enter the location and before the tires are put into storage.

E. Measures shall be taken to prevent the accumulation of debris, liquid, or dirt in and among stored tires.

F. Drainage of the location must be controlled so that:

1. Water is diverted away from the tires.

2. Run-off from tires is controlled in a manner that does not pose a threat to public health and safety or the environment.

3. Water is not allowed to pond or accumulate among stored tires.

18.229. Re-Use of Waste Tires.

Waste tires generated within the Reservation may be re-used for ballast, dock bumpers, or other purposes specifically approved by the Department.

18.230. Registration.

The owner or operator of a location at which between 10 and 50 waste tires are collected, handled, or stored at any one time must annually register the location with the Department on a form to be provided by the Department. The Department may charge an annual fee for such registration.

18.231. Disposal of Waste Tires.

Waste tires may be taken to a Community transfer station or collected by the Community Department of Public Works during bulk trash pickups in accordance with Department of Public Works tire policy.

**ARTICLE VI. TRANSFER STATIONS AND COMMERCIAL RECYCLING;
PERMITS**

18.232. Transfer Stations.

A. No person may operate or maintain a solid waste transfer station or commercial recycling facility unless the person:

1. has received written approval of a plan of operation as specified in this section from the Department; and
2. has received approval from the Community Council; and
3. has obtained an operating permit from the Department.

B. Plan of operation. No person may establish or construct a transfer station or commercial recycling facility prior to obtaining approval in writing from the Department of a plan of operation for the facility. The plan of operation shall specify the intent and objectives of the proposal, indicate methods and procedures to minimize adverse environmental impacts and provide a design which complies with the operation requirements in this section. The plan shall contain at a minimum the following information:

1. A legal description of the property and the transfer station boundaries.
2. The present ownership of the proposed transfer station property.
3. Land use within one-fourth (1/4) mile of the proposed transfer station.
4. The operator of the transfer station.
5. The size of the transfer station.
6. A USGS 7.5 minute or 15 minute quadrangle map of the transfer station property.

7. A discussion of the need for the transfer station or commercial recycling facility and the consistency of the development with area wide solid waste management plans, land use plans or other area wide plans. Alternatives considered in the project planning phase shall be discussed.
8. The population and area to be served by the transfer station or commercial recycling facility and projections for changes in use in the future.
9. The type and quantity of waste to be handled, including the maximum amount of daily waste to be received at the facility, and specific waste types which will not be accepted at the facility, including the method for screening the incoming waste to eliminate unacceptable material.
10. The persons responsible for structural improvements, building maintenance, and daily operation and control of the facility.
11. The types of vehicles used to transport solid waste into and out of the facility, and the maximum daily number of vehicles that will be received at the facility.
12. The vehicle traffic routing at the facility and provisions for access to connecting roadways.
13. The source of the facility's water supply and the method of wastewater treatment.
14. The methods of volume reduction to be used such as compacting, grinding, compression or tamping.
15. The design criteria used to select equipment capacity and building configuration and sizing.
16. Daily cleanup procedures. The plan of operation must provide that all solid waste shall be removed from the floor prior to completing daily operations.
17. The names and locations of all solid waste disposal facilities to which waste from the facility may be hauled.
18. The procedures for alternate routing of waste during inoperable periods at the facility.
19. The procedures to handle heavy or bulky items and locations for storage of solid waste beyond the end of the working day.
20. The equipment and procedures designed to control dust, odors, noise, fire and windblown paper.

21. The proposed life expectancy of the facility.
22. A detailed discussion of the safety equipment and procedures to be used at the facility.
23. An emergency plan that addresses fires, spills, releases and other hazardous incidences.

C. Engineering Plans. The plan of operation shall, at a minimum, include a set of engineering plans and maps which contain the following information, unless an exemption is granted in writing by the Department:

1. An existing conditions map, which shows the entire facility and the area within 1/2 mile. The minimum scale shall be 1"=400'. This map shall include the facility boundary, property lines, easements and rights-of-way; building foundations, roads, utilities and other structures; existing topography, drainage swales, surface waters, wetlands, floodplains and similar drainage features; wooded areas; location of soil borings and test pits; features of historical, archaeological, cultural, or religious significance to the Community; and other features as appropriate.
2. A facility plan, which shall include the proposed facility access roads and traffic patterns, buildings, scales, utility lines, drainage diversion, screening, means of access control, final topography, areas to be cleared of vegetation and other design features. The extent of coverage and scale shall be the same as that for the existing conditions map.
3. A proposed process layout plan which shows the receiving, storage and loadout areas. The minimum scale shall be 1"=20'. The plan shall include design details for the receiving area configuration and traffic flow patterns, storage area and equipment configuration, loadout area and equipment configuration, and other design features as appropriate.

18.233. Permits.

A. Upon Department approval of a plan of operation for a transfer station or commercial recycling facility, and after the Community Council approval, the Department may issue an operating permit to the applicant. Permittees shall be required to comply with this chapter, any guidance document issued hereunder, all Community environmental standards and criteria, all relevant guidance documents, all permit conditions, all orders issued by the Department under authority of this chapter, and all applicable Federal laws or Community Code, environmental in nature or otherwise.

B. The Department may impose whatever conditions it deems reasonably necessary to protect the environment, and the health, safety and welfare of the Community and its members before issuing any permit under this section.

C. All permits authorized by this chapter and issued by the Department shall be established for a period of time not to exceed five years.

D. A permittee shall apply for renewal of a permit by submitting a written notification of intent to renew the permit to the Department not less than 180 days before the existing permit expires.

18.234. Operating Requirements.

No person may operate or maintain a new transfer station or commercial recycling facility except in conformance with an approved plan of operation and the following operational requirements:

A. A sign shall be prominently posted at the entrance to the facility, which indicates the name, license number, hours of operation, waste types accepted, necessary safety precautions, and any other pertinent information specified by the Department.

B. If wastewater is generated, it must be collected and disposed of in accordance with applicable federal laws and Community regulations and ordinances.

C. The facility shall be operated under the direct supervision of responsible individuals who are thoroughly familiar with the requirements and the operational procedures of the transfer facility.

D. Unloading of solid waste may take place only within approved designated areas.

E. The transfer station and adjacent area shall be kept clean and free of litter.

F. Dust and odor generated by the unloading of solid waste and the operation of the transfer station shall be controlled at all times, in accordance with the Gila River Indian Community Code, Title 18, Chapter 7.

G. The following wastes shall not be accepted: sewage, sewage solids, biosolids, sludge, asbestos, wastes containing free liquids, explosive or flammable wastes, wastes that are burning, and hazardous waste (except household hazardous waste, and waste accumulated for proper disposal by the Department under Article VII Corrective Action and Cost Recovery).

ARTICLE VII. CORRECTIVE ACTION AND COST RECOVERY

18.235. Authority.

In addition to any other authority granted by law, the Department may:

A. Undertake independently, in cooperation with others, including EPA, or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction,

operation, maintenance and any other activity necessary to conduct removal or remedial actions in the Community and recover all costs incurred as a result of the removal or remedial action.

B. Participate in or conduct activities pursuant to the CERCLA, and the corrective action provisions of Subtitle I of the SWDA. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency or other participating agencies.

C. Upon receiving information about a release or a threat of release from a facility, evaluate the information and document its conclusions and may require, approve or conduct further investigations, monitoring or assessments as it deems necessary.

D. Request that a person disclose or make available for inspection and copying information, documents, or records, if the person has or may have information, documents or records relevant to the identification, nature and volume of a solid waste, oil, hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person.

1. Upon a reasonable basis to believe that there may be a release or threatened release of a solid waste, oil or hazardous substance at or upon any property or facility, the Department or its authorized representative may enter any property or facility at any reasonable time to:
 - a. Sample, inspect, examine and investigate;
 - b. Examine and copy records and other information; or
 - c. Carry out removal or remedial actions or any other action authorized by this section.
2. If any person refuses to provide information, documents, records or to allow entry under this chapter, the Director may issue an order pursuant to Article IX of this chapter requiring the person to provide such information, documents, records or to allow entry.

18.236. Strict Liability.

A. Persons Responsible for Remedial Action Costs and Natural Resource Damages. The following persons shall be strictly liable for those remedial action costs incurred by the Community or any other person that are attributable to or associated with a facility or release and for damages, injury, impaired use, or destruction of any person, property, cultural resources or natural resources caused by a release:

1. Any owner or operator of the facility at or during the time of the acts or omissions that resulted in the release.

2. Any subsequent owner or operator who agreed to assume the assets of the owner or operator at the time of the acts or omissions resulting in the release.
3. Any person who, by any acts or omissions, caused, contributed to or exacerbated the release.
4. Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

B. **Persons Not Liable for Remedial Action Costs.** Notwithstanding Section 18.236.A. of this chapter, the following persons shall not be liable for remedial action costs incurred by the Community or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

1. Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.
2. Any owner or operator, if the release at the facility was caused solely by one or a combination of the following:
 - a. An Act of God. *Act of God* means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
 - b. An act of war.

C. **Indemnification, Hold Harmless Agreements.** This section shall not bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability, but such indemnification, hold harmless, or similar agreement or conveyance shall not transfer from any person who may be liable under this chapter, to any other person, the liability imposed under this chapter.

D. **Good Commercial Practices to Minimize Liability.** To establish, for purposes of this chapter, that the person did or did not have reason to know, the person must have undertaken, prior to becoming the owner or operator, all appropriate inquiry into the previous uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

18.237. Removal or Remedial Action and Reimbursement of Costs.

- A. **Removal or remedial action; reimbursement of costs.**
 1. The Director may undertake any removal, remedial, or emergency removal or remedial action necessary to protect the public health, safety, welfare or the environment.

2. The Director may authorize any person responsible for remedial action costs or cultural or natural resource damages under this chapter to carry out any removal or remedial action in accordance with any requirements of or directions from the Director, if the Director determines that the person will commence and complete removal or remedial action properly and in a timely manner.
3. The Director may require a person liable under this section to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The Director's action under this subsection may include but need not be limited to issuing an order pursuant to Article IX of this chapter specifying the removal or remedial action the person must take.
4. The Director may request the General Counsel to bring an action or proceeding for legal or equitable relief in the Community Court as may be necessary:
 - a. To enforce an order issued under this chapter; or
 - b. To abate any nuisance or danger to the public health, safety, welfare or the environment related to a release.
5. Any order issued by the Director under this section shall be appealable under this chapter.
6. If any person who is liable under this section fails without sufficient cause to conduct a removal, remedial action, or nuisance abatement, as required by an order of the Director, the person shall be liable to the Department for the Community's remedial action costs, nuisance abatement costs, and for punitive damages not to exceed three times the amount of the Community's remedial action costs. The Director may request that the General Counsel commence an action in the Community Court to recover such costs.
7. The Director may request that the General Counsel commence an action in the Community Court to recover damages for Community property, cultural resources or natural resources caused by a release.

18.238. Clean up Standards.

A. Standards for degree of cleanup required. Any removal or remedial action performed under the provisions of this section shall attain a degree of cleanup and control of further release of the solid waste, oil, or hazardous substance that assures protection of present and future public health, safety, welfare and the environment in compliance with Community or applicable federal standards, including RCRA corrective action standards. Guidance for risk assessment and preliminary remediation goals shall be used to determine the level of any remaining contaminants, unless another method is specifically approved by the Director.

ARTICLE VIII. RESERVATION OF RIGHTS

18.239. Reservation of Rights.

The authority, power and remedies provided in this chapter are in addition to, and not a limitation of, any authority, power or remedies provided in any other ordinances, tribal sovereign authority or as provided at common law.

ARTICLE IX. CIVIL ENFORCEMENT

18.240. Administrative Compliance Orders.

A. If the Director has reasonable cause to believe that any person has violated or is in violation of any provision of this chapter, or any requirement of a permit issued pursuant to this chapter, the Director may issue an order requiring compliance as expeditiously as practicable, but in no event later than one year after the date the order was issued. The order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service in accordance with the Gila River Indian Community Code, Title 4.

B. An administrative compliance order issued pursuant to this section shall state with reasonable specificity the nature of the violation, the requirement, provision, or section violated, a reasonable time for compliance, if applicable, and shall state that the alleged violator is entitled to an administrative hearing if a hearing is requested in writing within 30 days after the date of issuance of the order.

C. An administrative compliance order becomes final and enforceable in the Community Court unless, within 30 days after receipt of the compliance order, the alleged violator requests a hearing in accordance with Article XII of this chapter. If a hearing is requested, the administrative compliance order does not become final until the Director has issued a final decision on the appeal.

D. After the administrative compliance order becomes final, the General Counsel, at the request of the Director, may file an action in Community Court to enforce an administrative compliance order issued pursuant to this section. Any person to whom a compliance order is issued who fails to take corrective action within the time specified in said order shall be liable for a civil penalty to be assessed by the Director in accordance with this section.

E. The Director's final decision is appealable to the Community Court, but the decision is not stayed during the appeal.

18.241. Civil Penalties.

A. **Administrative Civil Penalties.** Any person who is found to be in violation of this chapter, an administrative compliance order issued pursuant to this section, or any provision of a permit issued pursuant to this chapter, shall be subject to an order imposing an administrative civil penalty of up to \$5,000.00 per day for each violation. Vehicles and equipment used to commit acts which violate any provision of this chapter are subject to confiscation, impoundment, and forfeiture, and may be used to offset fines or penalties which may be assessed by the Department.

B. **Civil Judicial Penalties.** Any person who is found to be in violation of this chapter, an administrative compliance order issued pursuant to this section, or any provision of a permit issued pursuant to this chapter, shall be subject to a civil judicial penalty of up to \$37,500.00 per day for each violation. Vehicles and equipment used to commit acts which violate any provision of this chapter are subject to confiscation, impoundment, and forfeiture, and may be used to offset fines or penalties which may be assessed by the Community Court.

C. **Determining the Number of Days of Violation.** Each day of a failure to perform any act or duty for which a civil penalty may be assessed pursuant to this section constitutes a separate offense. Where the Director has notified the source of the violation, and made a showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved.

D. **Recovery of Penalties.** At the request of the Director, the General Counsel may file an action in Community Court to recover penalties provided for in this section.

E. **Penalty Assessment Criteria.** In determining the amount of a civil penalty under this section, the Director or the Community Court, as appropriate, shall consider the following factors:

1. The seriousness of the violation.
2. The economic impact of the penalty on the business;
3. The violator's full compliance history and good faith efforts to comply;
4. The duration of the violation as established by any credible evidence;
5. Payment by the violator of penalties previously assessed for the same violation;
6. The economic benefit of noncompliance; and
7. The size of the business.

18.242. Injunctive Relief.

At the request of the Director, the General Counsel may file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law if the Director has reasonable cause to believe that any of the following is occurring:

A. A person has violated or is in violation of any provision of this chapter, an order requiring compliance with this chapter, or any provision of a permit.

B. A person has violated or is in violation of an effective administrative compliance order.

C. A person is creating an imminent and substantial endangerment to the public health or the environment.

18.243. Denial or Revocation of Permit.

A. Denial. The Director may deny a request for a permit if the permit application demonstrates that the applicant is incapable of meeting the requirements of this chapter.

B. Revocation. Permits issued by the Department under the provisions of this chapter may be revoked by the Department for noncompliance with material conditions in the permit or when continued operation would violate an ordinance or create an imminent and substantial endangerment to public health or the environment.

C. Appeal. An order by the Director denying or revoking a permit is appealable to an administrative law judge and the final order of revocation from the Director is appealable to Community Court in accordance with Article XII of this chapter.

D. Exclusion. Any person who is not a member of the Community who is found by the Community Court to have committed any violation(s) under this chapter may be excluded from the Community; and may have his, her or its rights to engage in commercial dealings or consensual activities within the Community suspended or removed pursuant to Title 8, Chapter 1 of the Gila River Indian Community Law and Order Code.

ARTICLE X. CRIMINAL ENFORCEMENT

18.244. Criminal Enforcement Referral Procedure.

A. The General Counsel shall consult with and, as appropriate, refer for federal prosecution any person who is alleged to have willfully or knowingly violated this chapter or a permit issued under this chapter.

B. If this chapter is knowingly violated, information concerning the violation may be forwarded to the EPA Region IX under a Memorandum of Agreement or other

appropriate arrangement to be developed between Gila River Indian Community and EPA, for possible criminal prosecution.

ARTICLE XI. CITIZEN SUITS

18.245. Authority to Bring Civil Action.

A. Except as provided in Section 18.245.B, any person may commence a civil action on the person's own behalf against any person who is alleged to have violated or to be in violation of:

1. any provision of this chapter, or
2. an order issued by the Director with respect to this chapter.

B. No civil action may be commenced under this section against the Community, the Department, or Community officers, officials or employees acting within the scope of their duties. Community sovereign immunity bars civil suits against the Community or Community officers or officials acting within the scope of their duties.

C. The Department may intervene as a matter of right in any action filed under this section.

18.246. Notice; Stay of Action.

A. 60 days prior to commencing an action under Section 18.245, the plaintiff shall give notice of the violation to the following persons:

1. the Director of the Department;
2. the Gila River Indian Community (notice should be provided to the Governor); and
3. the alleged violator of the standard, limitation or order.

B. During the 60 day period prior to filing a citizen suit, the right to file a suit shall be stayed if the alleged violator and the Department reach an enforcement settlement agreement that resolves the violations that are the subject of the citizen suit and files such agreement with the Community Court. The violations that are the subject of the citizen suit may be resolved by payment of civil penalties, a compliance schedule, injunctive relief, or any combination thereof to which the parties agree.

C. The parties serving notice of the citizen suit shall have an opportunity to comment on the enforcement agreement, either through an open hearing or by filing written comments with the Community Court. After the comment period, the Community Court shall act to approve, modify or reject the enforcement settlement agreement. The stay of the citizen suit shall remain in effect until the Community Court issues a decision. If the Community Court rejects the enforcement settlement agreement, the stay is automatically lifted and the citizen suit may be filed in Community Court. If

the Community Court approves the enforcement settlement agreement or approves it with modifications, the stay becomes permanent.

18.247. Jurisdiction.

Where a citizen suit is allowed to go forward, the Community Court shall have jurisdiction to enforce this chapter or Department orders issued pursuant to this chapter and to apply any appropriate civil penalties.

18.248. Award of Costs.

The Community Court, in issuing any final order in any action brought pursuant to Section 18.245, may award costs of litigation (including any reasonable attorneys' and expert witness fees) to any party, whenever the Court determines such award is appropriate.

18.249. Non-Restriction of Other Rights.

Nothing in this section shall restrict any right which any person may have under the laws and ordinances of the Community to seek enforcement of this chapter or to seek any other relief, excluding relief against the Community, the Department, or Community officers, officials or employees acting within the scope of their authority.

ARTICLE XII. APPEALS

18.250. Applicability.

This section applies to all appealable Department actions. An appealable Department action is:

- A. The issuance or denial of a permit;
- B. A significant revision to a permit;
- C. Failure to act on a permit application in a timely manner or as prescribed by this chapter;
- D. Revocation of a permit;
- E. The issuance of an administrative compliance order; or
- F. The imposition, by order, of an administrative civil penalty.

18.251. Administrative Appeals Procedure.

- A. Notice of Appealable Agency Action: Hearing.
 - 1. At the time an action is taken that is appealable under this chapter, the Department shall serve notice of the action pursuant to Section 18.251.B.

The notice shall identify the provision of this chapter that is alleged to have been violated or on which the action is based and shall include a description of the party's right to request a hearing on the matter.

2. A party may obtain a hearing on an appealable agency action by filing a notice of appeal with the Department within 30 days after receiving the notice. The notice may be filed by a party whose legal rights, duties, privileges were determined by the appealable agency action. A notice of appeal may also be filed by a party who will be adversely affected by the issuance or denial of a permit and who exercised any right to comment on the action as provided by law or ordinance, provided that the grounds for appeal are limited to issues raised in that party's comment. The Director has the discretion to accept notices that are filed late due to circumstances beyond the party's control.
3. The notice of appeal shall identify the party, the party's address, the action being appealed and shall contain a concise statement of the reasons for the appeal. The Department shall notify the Governor of the appeal and the Governor shall appoint an ALJ pursuant to Section 18.251.D.

B. Process Service.

1. Every notice or decision shall be served by personal delivery pursuant to the Gila River Indian Community Code, Title 4, or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to every party to the action. Notice shall be mailed to the party's last address of record with the Department.
2. Each party shall inform the Department and if applicable, the administrative law judge of any change of address within five days of the change.

C. Request for a Hearing.

1. The Director shall notify the Governor's office of the appeal within five business days.
2. If requested, the Department shall provide the Governor's Office with information necessary to facilitate the appointment of an ALJ and schedule a hearing.

D. Assignment of Administrative Law Judge: Setting the Hearing. Within 30 days of the Governor's receipt of a request for a hearing, the Governor, or his designee, shall provide the following, in writing, to the appealing party and the Department:

1. The name of the administrative law judge assigned to hear the matter; and
2. The date, time, and location of the hearing.

- E. Scheduling of Hearing.
1. Except as provided in Section 18.251.E.2., hearings shall be held within 90 days after the notice of appeal is filed.
 2. The date scheduled for the hearing may be advanced or delayed upon the agreement of the parties or upon a showing of good cause.
 3. The administrative law judge shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing. The notice shall include:
 - a. A statement of the time, place, and nature of the hearing.
 - b. A statement of legal authority and jurisdiction under which the hearing is to be held.
 - c. A reference to the particular sections of this chapter involved.
 - d. A short and plain statement of the matters asserted.
 4. Any party to the appeal may file a motion with the administrative law judge asserting the party's right to an expedited hearing.
- F. Pre-Hearing Conference.
1. Upon written request of any party or upon the administrative law judge's own motion, the administrative law judge may schedule a pre-hearing conference at least 10 days before the date set for hearing. The purpose of the pre-hearing conference is to:
 - a. Clarify or limit procedural, legal, or factual issues.
 - b. Consider amendments to any pleading.
 - c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
 - d. Obtain stipulations or rulings regarding testimony, exhibits, fact or law.
 - e. Schedule deadlines, hearing dates, and locations if not previously set.
 - f. Allow the parties the opportunity to discuss settlement.
 2. The pre-hearing conference must be scheduled at least 10 days before the hearing takes place. The administrative law judge may issue a pre-hearing order outlining the issues to be discussed. This order shall control the subsequent course of the action.

3. The administrative law judge shall record any agreements reached during a pre-hearing conference by electronic or mechanical means or memorialize them in an order reciting the agreement or action taken.
- G. Hearing.
1. The parties have the right to be represented by counsel or to proceed without counsel, to submit evidence, and to cross-examine witnesses.
 2. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and enforced in a manner provided by the Gila River Indian Community Code for the service and enforcement of subpoenas in civil matters.
 3. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by danger of unfair prejudice, by confusion of the issues or considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
 4. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the Department's expense. Any party requesting a transcript shall pay the costs of the transcript.
 5. Informal disposition may be made by stipulation, agreed settlement, consent order, or default.
 6. The hearing may be conducted in an informal manner and without adherence to the formal rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision if the evidence supporting the decision is substantial, reliable, and probative.

18.252. Final Administrative Decision: Review.

- A. Recommended Decision.
1. The administrative law judge shall issue a written recommended decision, which shall be made part of the administrative record, within 20 days after the hearing is concluded. The recommended decision shall include

findings of fact and conclusions of law, separately stated, and a concise explanation of the reasons supporting the recommended decision.

2. The administrative law judge shall serve a copy of the recommended decision on all parties to the appeal and the Director.
 3. Within 30 days after the date the administrative law judge sends a copy of the recommended decision to the Director, the Director may review the decision and accept, reject or modify it in accordance with the following requirements:
 - a. If the Director declines to review the administrative law judge's decision or accepts the decision, the Director shall serve the decision on all parties.
 - b. Prior to rejecting or modifying the decision, the Director shall consult with and obtain the written consent of the Governor or his or her designee. The Director shall thereafter serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth reasons for the rejection or modification.
- B. Final Decision.
1. The Director's final decision shall state separately the findings of fact and conclusions of law or, if the Director accepts the recommended decision, the final decision may attach and incorporate the recommended decision by reference. If no appeal is taken within 30 days, the decision shall become final.
 2. A party may appeal a final administrative decision pursuant to the following Section 18.253 of this chapter.

18.253. Judicial Review of Final Administrative Decisions.

- A. Scope.
1. This section applies to and governs every action for judicial review of a final administrative decision of the Director.
 2. Unless review is sought of an administrative decision within the time and in the manner provided in this subsection, the parties to the proceeding shall be barred from obtaining judicial review of such decision.
- B. Commencement of Action. An action to review a final administrative decision shall be commenced by the affected party by filing a complaint within 30 days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The decision shall be deemed to have been served when personally delivered or

mailed by registered mail to the party affected at the last recorded residence or place of business.

C. Jurisdiction. Jurisdiction to review final administrative decisions is vested in the Community Court.

D. Service of Process. In an action to review a final administrative decision, a copy of the summons and complaint shall be served as in civil actions and, as provided by the Gila River Indian Community Code, Title 4, upon the Director.

E. Appearance of Defendants. Within 20 days after service of the summons and complaint, the Director shall answer the complaint.

F. Pleadings and Record on Review.

1. The complaint shall contain a statement of the findings and decision or part thereof for which review is sought, shall clearly specify the grounds upon which review is sought, and shall attach a copy of the final decision. It shall also state what portion of the record the party asserts is relevant to the review it is seeking and which shall be filed by the Director as part of the record on review.
2. Except as otherwise provided, the Director shall file an answer which shall contain the original or a certified copy of the portion of record designated in the complaint. The answer may also contain other portions of the record as the Director deems relevant. By order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.
3. If, as a result of judicial review, the cause is remanded to the Department and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all parties, shall constitute the record on review.

G. Scope of Review.

1. An action to review a final administrative decision shall be heard and determined within a reasonable time. The hearing and determination shall be extended to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to a finding, order, or decision of the Department shall be heard by the court.
2. If the proceedings before the administrative law judge were not stenographically reported or mechanically recorded so that a transcript might be made, the matter shall be remanded to the administrative law judge for a new hearing.

3. The Community Court may not reverse the final administrative decision unless the record demonstrates that the decision is arbitrary and capricious or the Director acted beyond the scope of authority granted, or unless the decision is clearly erroneous as matter of law or lacks a substantial evidentiary basis.

H. Authority of the Gila River Indian Community Court.

1. The Community Court may:

- a. Affirm the final decision, or reverse the final decision, in whole or part, and remand the matter to the Director or ALJ as appropriate.
- b. With or without bond, unless required by ordinance under authority of which the administrative decision was entered, and before or after answer, stay the decision in whole or in part pending final disposition of the case, after notice to the Department and for substantial good cause shown.
- c. Make any order that it deems proper for the amendment, completion, or filing of the record of the proceedings by the Department.
- d. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
- e. Dismiss parties or realign parties.
- f. Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
- g. When a hearing has been held by the administrative law judge, remand for the purpose of taking additional evidence when from the state of the record or otherwise it appears that such action is just.

2. Technical errors in the proceedings before the administrative law judge or failure to observe technical rules of evidence shall not constitute grounds for reversal of the decision, unless the trial court determines that the error or failure materially affected the rights of a party and resulted in injustice to that party.

3. On motion of a party before rendition of judgment, the trial court shall make findings of fact and state conclusions of law upon which its judgment is based.

I. Appellate Review. The final decision, order, judgment, or decree of the Community Court entered for an action to review a final administrative decision of the Director may be appealed to the Gila River Indian Community Court of Appeals.

ARTICLE XII. PUBLIC PARTICIPATION AND HEARINGS

18.254. Public Participation and Hearings.

In administering this chapter, the Department shall allow public participation and schedule hearings as it deems appropriate. A public notice shall be posted at all District Service Centers describing the dates, times, and locations of all public hearings held pursuant to this chapter at least five working days prior to the public hearing. The public hearing notice shall also provide a concise description of the purpose of the hearing. At the hearing, the Department may request public comments regarding the subject of the hearing.

ARTICLE XIV. INDEMNIFICATION

18.255. Indemnification.

Any person, vendor or permittee who contracts with the Community to collect, transport, distribute, or dispose of solid waste, shall indemnify the Community, or any of its members, officers, agents or employees, from any claims and liabilities of any nature whatsoever, including third party suits for personal injury, death, environmental cleanup, or property damage, which are based upon any violations of any of the provisions of this chapter; guidance documents; waste standards; any orders or permit conditions; or any other Federal or Community environmental laws, and which claims or liabilities are not caused by the Community, or any of its members, officers, agents or employees.

ARTICLE XV. SEVERANCE

18.256. Severability.

If any provisions of this chapter, or any application of its provisions to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remaining provisions of this chapter, shall not be affected thereby.

ARTICLE XVI. EFFECTIVE DATE

18.257. Effective Date.

This chapter shall become effective the date it is enacted by the Community Council. No provisions of the chapter shall be construed to be retroactive. All persons shall come into compliance with this chapter and submit all documentation and apply for all permits and approvals required hereunder within 180 calendar days or such a time as indicated in a permit.