



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

ORDINANCE GR-05-14

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY REPEALING CURRENT TITLE 18, CHAPTER 3 AND ENACTING AN AMENDMENT TO TITLE 18, CHAPTER 3 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 3, 1996, the Community Council, through Ordinance GR-04-96, adopted the 1996 Pesticide Ordinance, which is now codified at Gila River Indian Community Code, Title 18, Chapter 3; and

WHEREAS, the Department of Environmental Quality desires to amend Title 18, Chapter 3 by repealing the 1996 Pesticide Ordinance and enacting the Pesticide Code; and

WHEREAS, the 1996 Pesticide Ordinance does not address many of the pesticide activities that occur within the Gila River Indian Reservation, particularly with the growth of agriculture and residential development, which are two areas of vital importance to the Community; and

WHEREAS, enacting the 2014 Pesticide Code ("Code") formalizes and establishes uniform requirements and procedures for the safe handling, storage, sale, production, transportation, and application of pesticides within the Reservation, in order to protect the public health, safety and environment of the Community and of all individuals living and/or working within the Reservation; and

WHEREAS, the obligation of complying with the Code's requirements are upon any person engaged in a pest management business and any other person falling within its scope; and

- WHEREAS,** the Code appoints the Pesticide Control Office to establish guidelines for integrated pest management programs and to develop application forms, permits, certifications, and registrations; and
- WHEREAS,** the Code establishes requirements and fees for obtaining permits, certifications, registrations and exempted applicators; exempted applicators include Community member owned businesses and Community departments and programs who are exempt from permit fees and Community members are exempt from Community certified applicator certification fees; and
- WHEREAS,** the Code establishes categories in which an applicator must be certified to apply restricted use pesticides, which is required for consistency with Federal requirements; and
- WHEREAS,** the Code establishes various notice requirements prior to application of pesticides and establishes requirements for the sale, disposal, and storage of pesticides, including in service vehicles; and
- WHEREAS,** the Code establishes requirements for the control of wood destroying insects as well as requirements for the use of fumigants; and
- WHEREAS,** the Code includes criminal enforcement for any violation of the Code and includes additional civil enforcement authority for DEQ, including administrative warrants; and
- WHEREAS,** the Code establishes an administrative appeals procedure and the procedures for judicial review of final administrative decisions; and
- WHEREAS,** the Code requires that any person engaged in pest management activities prior to the effective date of this chapter shall have 90 days to come into compliance by obtaining all applicable permits, certifications and registrations; and
- WHEREAS,** the Legislative Standing Committee, Natural Resources Standing Committee, and Economic Development Standing Committee recommend enactment of the 2014 Pesticide Code; and
- WHEREAS,** the Community Council has reviewed the attached 2014 Pesticide Code and finds the Code to be in the best interest of the Community; and
- WHEREAS,** the 2014 Pesticide Code 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.

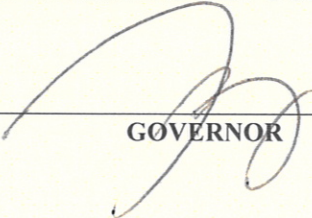
NOW, THEREFORE, BE IT ENACTED, that the Gila River Indian Community Council hereby amends the 2009 Gila River Indian Community Code by repealing current Title 18, Chapter 3, and enacts and codifies the new Title 18, Chapter 3, Pesticide Code, which is attached to this ordinance, effective on the date 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: 14 FOR; 0 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



RECEIVED
PIMA AGENCY

JUL 10 2014

BUREAU OF INDIAN AFFAIRS
SACATON ARIZONA

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CHAPTER 3. PESTICIDE CODE

18.301. Title.

This chapter may be cited and referred to, and shall be known as, the Gila River Indian Community Pesticide Code (the “Pesticide Code”).

18.302. Authority.

A. 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 provides the Community authority to organize, adopt the Constitution and Bylaws of the Community (March 17, 1960) and enact laws and ordinances governing conduct within the exterior boundaries of the Reservation, 25 U.S.C. § 476.

B. The Community enacts this chapter to regulate certain activities within the Reservation as prescribed by *Montana v. United States*, 450 U.S. 544 (1981). The Community finds that persons engaged in conduct or activities within the Reservation pursuant to a commercial dealing, lease agreement, contract, permit, license, certification, registration, or other arrangement have voluntarily 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 political integrity, economic security, health, welfare and environment of the Community.

C. Further, separate from *Montana* 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).

D. The authority to manage and regulate the handling, storage, selling, production, transportation, and application of pesticides within the Reservation inherently lies within the retained sovereign power of the Community.

18.303. Purpose.

A. It is the intent and purpose of this chapter to formalize and establish uniform requirements and procedures for the safe handling, storage, sale, production, transportation, and application of pesticides within the Reservation, in order to protect the public health, safety and environment of the Community and of all individuals living and/or working within the Reservation. Its provisions shall be liberally construed to facilitate the accomplishment of these purposes.

B. It is the specific intent of this chapter to place the obligation of complying with this chapter's requirements upon any person engaged in a pest management business, and any other person falling within its scope. No provision of this chapter shall be construed to create or to form the basis for liability on the part of the Community or its officers, employees, or agents, for any alleged injury or damage arising from the adoption, administration, application, implementation, or enforcement of this chapter.

18.304. Definitions.

A. Unless a term is defined in this section, the terms used in this chapter have the meanings as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and if not defined in FIFRA, the common meanings as found in a Webster's dictionary. A term defined in this section does not replace a term defined in FIFRA, but only expands upon the FIFRA definition to explain how the FIFRA term is applied in the Community.

1. *Administrative law judge* means an individual with experience and expertise in the law, appointed by the Executive Office, who sits as the trier of fact, applies the law in conducting and issuing rulings, and recommends a decision in administrative hearings called for in this chapter.
2. *Aircraft pilot* means a person who is licensed by the Federal Aviation Administration to operate an aircraft and who also is a Community certified applicator, certified by the Office to apply pesticides within the Reservation from the aircraft while in flight over the Community.
3. *Applicator* means an individual who uses or supervises the use of a pesticide within the Reservation and can include a certified applicator, a Community applicator, or a Community certified applicator.
4. *Agricultural pesticide* means a pesticide used in the production of agricultural commodities.
5. *Certified applicator* means either of the following:
 - a. An Arizona Department of Agriculture certified private applicator; or
 - b. An U.S. EPA, or other federal, state, or tribal government's certified commercial applicator, if the U.S. EPA has approved the other federal, state, or tribal government under 40 CFR Part 171 to certify commercial applicators to use restricted use pesticides.
6. *Commercial applicator* means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use on any property other

than property owned or controlled by the applicator, the applicator's employer, or another person, if the application is performed without compensation.

7. *Community* or *GRIC* means the Gila River Indian Community.
8. *Community applicator* means either an employee of a Community governmental entity or a Community member, which the Office certifies in accordance with the provisions of this chapter to use or supervise the use of any general use pesticides within the Reservation.
9. *Community certified applicator* means a certified applicator that the Office certifies in accordance with the provisions of this chapter to use or supervise the use of any restricted use pesticides within the Reservation.
10. *Community Council* means the Gila River Indian Community Council.
11. *Community Court* means the trial court of the Gila River Indian Community.
12. *Department* means the Gila River Indian Community, Department of Environmental Quality.
13. *Director* means the Executive Director of the Gila River Indian Community, Department of Environmental Quality.
14. *Direct supervision* means that a pesticide is applied by a person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.
15. *Executive Office* means the Governor, or the Chief Executive Officer of the Community pursuant to the Constitution and Bylaws of the Community, approved March 17, 1960, or his or her designee.
16. *FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act of 1996, 7 U.S.C. § 136 *et seq.*, as amended. For purposes of this chapter, the term FIFRA also includes the regulations adopted thereunder, as codified in 40 CFR Chapter I Subchapter E Parts 150 through 189.
17. *Final grade treatment* means the establishment of vertical barriers at the exterior of foundation walls in stem wall construction or at the exterior of grade beams in monolithic construction.
18. *Form 1080* means the Arizona Department of Agriculture document used to provide notice of commercial applications of agricultural pesticides.

19. *General Counsel* means the Gila River Indian Community Office of General Counsel and staff and other attorneys retained by the Community.
20. *General use pesticide* means any pesticide classified as a general use pesticide by the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a(d).
21. *Integrated pest management* means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health and environmental risks.
22. *Label* means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers, including its labeling.
23. *Labeling* means all labels and other written, printed or graph matter which is:
 - a. Accompanying the pesticide or device at any time, or
 - b. Referenced on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of a United States governmental agency or the official pesticide registration agencies of the State of Arizona.
24. *Marketplace* means an establishment that sells food and other general merchandise commonly used by a person in household and office environments.
25. *New-construction treatment* means a termite treatment that complies with standards in this chapter, protects all cellulose components of a structure from subterranean termites, and is performed after a permanent concrete slab foundation is installed or after footings and supports for a raised foundation are installed, but before the structure or a final grade is completed.
26. *Office* means the Department of Environmental Quality's Pesticide Control Office of the Gila River Indian Community.
27. *Office approval* means any of the methods the Office uses to allow a person to conduct a pesticide regulated activity. Examples of Office approval include, but are not limited to: permits, registrations, certifications, and approval letters.
28. *Person* means any individual, public or private corporation, company, partnership, firm, business, association or society of persons, whether incorporated or not, and any governmental agency or other governmental subdivision, including the Community and any of its divisions, departments, programs, enterprises or companies, unless expressly provided otherwise.

29. *Person-in-charge* means an individual who has passed the National Pesticide Applicator Certification Core exam and who is employed by a seller of a restricted use pesticide or an agricultural pesticide.
30. *Pest* means any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organism that is in an undesirable location, and any other form of terrestrial or aquatic plant or animal life, exception virus, bacteria or other microorganisms on or in living humans or other living animals, which the Director declares to be a pest for the purpose of enforcement of this chapter.
31. *Pest control advisor* means an individual licensed by the Arizona Department of Agriculture as a “pest control advisor” or “agricultural pest control advisor.”
32. *Pest management business* means all of the following:
 - a. A business licensed by the Arizona Department of Agricultural as a custom applicator that employs a certified applicator for the purpose of using pesticides to control pests within the State of Arizona.
 - b. A business licensed by the Arizona Office of Pest Management to engage in the business of structural pest control that employs a certified applicator for the purpose of using pesticides to control pests within the State of Arizona.
 - c. A federal governmental agency that employs a certified applicator for purpose of using pesticides to control pests within the State of Arizona.
 - d. A state agency or a political subdivision of the State of Arizona that employs a certified applicator for the purpose of using pesticides to control pests within the State of Arizona.
 - e. A Community government entity that employs either of the following:
 1. A Community certified applicator for the purpose of using a restricted use pesticide while engaged in the performance of official duties to control pests within the Reservation; or
 2. A Community applicator for the purpose of using a general use pesticide while engaged in the performance of official duties to control pests within the Reservation.
 - f. A Community member that is a Community applicator and offers for compensation to use general use pesticides for the purpose of controlling pests within the Reservation.

33. *Pesticide* means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating arthropods, including insects and arachnids, fungi, bacteria, microbe, weed, rodent, predatory animal or any form of plant or animal life that is a pest and may infest or be detrimental to vegetation, humans, animals or households or be present in any environment.
34. *Pesticide regulated activity* means any activity involving the use of a pesticide when that activity is regulated under this chapter. Examples of pesticide regulated activities include, but are not limited to, the production, transportation, storage, sale, use, and disposal of pesticides, pesticide containers, and pesticide devices, as well as using an animal to assist with identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations.
35. *Post-construction treatment* means a termite treatment to control subterranean termites or other wood destroying insects in an existing structure, and is performed after all soil disturbance associated with construction is complete and after an applicator has completed an inspection of the structure and a treatment proposal.
36. *Pre-construction treatment* means a termite treatment that protects all cellulose components of a structure from subterranean termites, which is performed before a permanent concrete slab foundation is installed or in conjunction with establishing footings and supports for a raised foundation, and establishes thorough and complete horizontal and vertical termiticide treated barriers.
37. *Private applicator* means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for the purposes of producing an agricultural commodity on property owned or controlled by the applicator or the applicator's employer or (if applied without compensation other than the trading of personal services between producers of agricultural commodities) on the property of another person.
38. *Producer* means a person who manufactures, compounds, propagates, processes, or repackages any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being "producers" for the purposes of this chapter.
39. *Regulated grower* means a person who acquires or purchases pesticides or contracts or otherwise arranges for the application of pesticides to agricultural commodities or onto an agricultural establishment, as a part of the person's

normal course of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

40. *Reservation* means any land within the exterior boundaries of the Gila River Indian Reservation, including fee patented and allotted lands used or claimed by any person, without regard to such person's membership in the Gila River Indian Community, and any land outside such boundaries held in trust for the Community or any of its members by the United States, including the Toka Sticks Golf Course located at 6910 Williams Field Road in Mesa, Arizona, and any other land constituting Indian Country within the meaning of 18 U.S.C. § 1151 or any successor provision.
41. *Restricted use pesticide* means any pesticide classified as a restricted use pesticide by the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a(d), and identified as such or required to be identified as such by the product label.
42. *School* means any educational institution that provides instruction in kindergarten programs, grades one through twelve and pre-kindergarten programs, such as the Community's Early Education Child Care Centers and Head Start Programs.
43. *Seller* means any person selling or offering for sale a restricted use pesticide.
44. *To Use Any Registered Pesticide In A Manner Inconsistent With Its Labeling* means to use any registered pesticide in a manner not permitted by the labeling, except that the term shall not include:
 - a. Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - b. Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the labeling specifically prohibits use against the pest;
 - c. Employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling;
 - d. Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;
 - e. Using a pesticide in conformance under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v.
45. *U.S. EPA* means the United States Environmental Protection Agency.

46. *Wood destroying insect* means any insect including subterranean termites, dry wood termites, powder post beetles and carpenter ants, which cause damage to any wood or cellulose material.
47. *Worker Protection Standard* means the Worker Protection Standard codified under 40 CFR Part 170, which is hereby adopted by reference and incorporated into and part of this chapter with the exception of the five year time frame specified in § 170.230(a), which for the purpose of this chapter shall be three years.

18.305. Applicability.

A. The provisions of this chapter shall apply to all persons and property within the Reservation, except as otherwise provided herein.

B. The use of pesticide is regulated by its label and labeling. It is a violation of FIFRA and this chapter to use any registered pesticide in a manner inconsistent with its labeling. While this chapter may impose additional requirements on the use of a pesticide, a person shall not construe a Pesticide Code requirement as permission to use the pesticide in violation of its labeling.

18.306. Adoption by Reference.

FIFRA, as defined in this chapter and including any amendments that may be in effect at the time of the activity regulated pursuant to this chapter, is hereby adopted by reference and incorporated as part of this chapter. If a provision of this chapter is more stringent than a provision of FIFRA, then a person shall comply with the more stringent provision of this chapter.

18.307. Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

18.308. Pesticide Control Office.

A. Establishment. The Pesticide Control Office is hereby established within the Department of Environmental Quality.

B. Powers and Duties. The Office is hereby designated as the Community's lead department responsible for administering this chapter and is authorized to exercise all of the legal authority necessary for this purpose, including, but not limited to, the following:

1. Enforcing this chapter, consistent with the provisions specified herein;

2. Proposing amendments to this chapter and the permit systems from time to time to reflect amendments to FIFRA, the Worker Protection Standard and other information, experiences, or developments warranting the proposal of amendments hereto;
3. Adopting reasonably necessary regulations, policies and procedures consistent with requirements under Community law and federal law regarding pesticide use for the protection of the health, safety and welfare of the Community provided that the Office:
 - a. Provides affected parties an opportunity to comment on proposed regulations, including holding a public hearing if a public hearing is requested;
 - b. Prepares a responsive summary that addresses the comments received and provides a copy of the responsive summary to the person(s) submitting the comments and person(s) attending the public hearings if held; and
 - c. Submits for review and approval a copy of the proposed regulations and responsiveness summary to the Natural Resources Standing Committee.
4. Maintaining a record of its acts and proceedings, including the issuance, denial, renewal, suspension, or revocation of certifications, permits, and registrations;
5. Developing and submitting to the U.S. EPA as necessary for approval, a certification and training plan as authorized under FIFRA, 7 U.S.C. § 136u, that is in compliance with 40 CFR Part 171. Such plan will set forth the requirements for a certified applicator to become a Community certified applicator in categories specified in this chapter and any subcategories that the Office may deem necessary. Once the U.S. EPA approves the certification and training plan, the Office shall be responsible for administering and updating of said approved plan;
6. Developing and administering standards for the training and certification of Community applicators in categories specified in this chapter and any subcategories that the Office may deem necessary;
7. Issuing and enforcing permits, registrations, and certifications under the provisions of this chapter;
8. Hiring Pesticide Control Officers and other staff as needed and as funding allows;
9. Utilizing all reasonably available resources and services to monitor activities regulated under this chapter;

10. Imposing emergency restrictions, requirements, controls, and prohibitions regarding regulated activities as necessary to protect the health, safety and welfare of the Community against hazards posed by pesticide usage considering all reasonable accessible data and information as may appear technically and scientifically credible. If the Office determines that an emergency exists requiring an immediate pesticide application, the Office may authorize such emergency pesticide application.
11. Assessing notice of violations, administrative compliance orders and fines, civil fines, suspending or revoking permits, certifications, or registrations, and assessing penalties for violations of any provision of this chapter in accordance with Section 18.340;
12. Working cooperatively with federal, tribal, state, county, and municipal government agencies and contracting with appropriate private parties, businesses, and technicians to coordinate pest management activities, including entering into intergovernmental agreements as appropriate for optimal coordination, cooperation, and assistance in relation to regulated activities;
13. Designating residential and institutional areas located adjacent to farmlands as pesticide management areas;
14. Delegating authority to authorized representatives of the Office to conduct inspections, investigations, sampling, observations, inquiries and enforcement of any provision of this chapter;
15. Enforcing FIFRA and the pesticide regulations adopted there under as codified in 40 CFR, Chapter I, Subchapter E., as applicable;
16. Maintaining a public educational outreach program focused on pesticide safety;
17. Maintaining a compliance assistance program; and
18. Performing such other duties and responsibilities as it deems necessary to implement this chapter.

18.309. Pesticide Fund.

A. The pesticide fund in existence as of the effective date of this chapter shall remain in effect.

B. The Office may use the pesticide 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, the purchasing of educational and outreach materials, sampling and the

laboratory testing of pesticide residue, compliance and enforcement, and the training of the Office'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 pesticide 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.

18.310. Pesticide Management Areas.

A. The Pesticide Management Areas, in existence as of the effective date of this chapter, are hereby adopted by reference and incorporated herein. The Office shall develop guidelines for the establishment of new pesticide management areas and changes to the boundaries of existing pesticide management areas. In developing the guidelines, the Office shall consider the number of residences, public areas and structures located near agricultural fields. The Office shall provide written notice to all affected parties of the establishment of new pesticide management areas and changes to existing pesticide management areas. The Office shall prepare, date, keep on file and make available upon request maps identifying the location of all new and existing pesticide management areas and the location of the existing pesticide management areas and any changes thereto.

B. If the Office determines that an agricultural emergency under this chapter exists, the Office may suspend any pesticide application restrictions imposed on pesticide management areas during the time of the emergency. The Office shall show in writing, its reasons for the determination of an agricultural emergency. In making the determination of an agricultural emergency, the Office shall consider the following criteria:

1. Whether the health, welfare, or safety of the Community is threatened;
2. Whether a natural cause exists such as a boll weevil, whitefly, or other infestation of insects that threatens the economic viability of crops or ongoing weather conditions such as muddy or flooded fields precludes use of alternative treatment options; and
3. Whether a significant loss to the crop will result from any organism determined to be a pest.

C. The Office shall prohibit aerial pesticide applications by fixed wing aircraft within a pesticide management area, unless the Director determines an agricultural emergency exists.

D. The Office may allow aerial pesticide applications by helicopter and ground applications at any time within a pesticide management area.

18.311. Integrated Pest Management Program.

The Office shall prepare guidelines for an integrated pest management program that will consider the following elements:

A. The identification of pests.

B. The establishment of a monitoring and record keeping system for regular sampling and assessment of pest populations.

C. The determination of the pest population levels that can be tolerated based on aesthetic, economic and health concerns and setting action thresholds if pest problems or environmental conditions warrant remedial action.

D. The prevention of pest problems through sanitation, the management of waste, the addition of physical barriers and the modification of habitats that attract and/or harbor pests.

E. A preference for reliance on nontoxic, biological, cultural or mechanical pest management methods or reliance on the use of natural control agents.

F. The use of chemical pesticides, if necessary, with preference for products that are the least harmful to human health and the environment.

18.312. Criteria for Application Forms, Permits, Certifications, and Registrations

A. The Office shall develop an application form for each of the following: a pesticide use permit, an applicator certification, a producer registration, a seller registration, a pest control advisor registration, and other pest management activities that the Office determines is necessary for the safe use of pesticides within the Community. All applications, permits, certifications, and registrations shall include an affirmation that the permittee, certified or registered person voluntarily consents to the jurisdiction of the Gila River Indian Community and its civil regulatory authority for any and all activities authorized by this chapter, including the authority of the Office to conduct investigations of violations of this chapter and inspections of facilities, offices, aircrafts, etc., whether located on or off the Gila River Indian Community. The application forms shall indicate if the application is for a new application or for a renewal. If a renewal application, the Office may waive the submission of duplicative supportive documentation that was received during the applicant's initial application submission. The Office shall use the following criteria and may use any other reasonable criteria the Office deems necessary in developing the forms.

1. *Pesticide Use Permit.* The pesticide use permit application form and other information required prior to approval of the application shall include all of the following, unless otherwise stated:
 - a. The applicant's contact information and information pertaining to the applicant's business and qualifications.
 - b. The designation of the applicant's principal office location and each branch office doing business within the Reservation and the address where the records required to be maintained under Section 18.319 to Section 18.323 will be kept;
 - c. A copy of the documents, such as licenses, permits, certifications, and registrations, required under state pesticide laws that allows the applicant to operate a pest management business in the State of Arizona. The documents must be valid at the time of submittal. The document submittal requirement does not apply to federal or Arizona governmental agencies, Community governmental departments and programs or to Community applicators.
 - d. A copy of the documents, such as licenses, permits, certifications, and registrations, required under this chapter, state pesticide laws or FIFRA for each certified, Community, or Community certified applicator.
 - e. If the applicant is a regulated grower, a listing of the applicators, pesticide workers and pesticide handlers with their U.S. EPA Worker Protection Standard identification numbers including its date of issuance.
 - f. If the applicant is a regulated grower, the submission of a map indicating the land to which the applicant intends to apply or have pesticides applied. The map shall have a unique identifier for each farm field and indicate the size of each farm field in acres.
 - g. The submittal of proof of financial responsibility to cover claims of injury, illness, death, or property damage resulting from pesticide use. Such proof shall consist of a certificate of liability insurance or a surety bond endorsed in favor of the Community and shall be maintained at all times in the amount of at least \$100,000 for property damage, \$100,000 for personal death, injury or illness, and \$100,000 for public liability. The requirement to provide proof of financial responsibility does not apply to Community governmental departments and programs, regulated growers and seed treaters.

- a. The applicant's contact information;
 - b. For the initial producer registration:
 - 1. The current U.S. EPA's establishment number issued to the producing establishment; and
 - 2. A list of the pesticides being produced, each pesticide's active ingredients, each pesticide's U.S. EPA registration number, and a complete copy of each pesticide's label.
 - c. After the initial producer registration, the producer shall submit an annual report that contains information about the pesticides that were produced during the past year, and sold or distributed during the past year. The producer may submit the annual report to the Office at the same time the producer is required to submit to the Department other reports containing similar information, but in no case shall the reports be submitted after March 31 of the calendar year of the renewal. If the producer fails to submit the annual report by March 31 of the calendar year, then the Office shall revoke or suspend the registration until the annual report is received.
4. *Seller Registration.* The seller registration application form and other requirements required for approval of the application shall include the following:
- a. The applicant's contact information, the name and contact information of the person-in-charge and the location where records required to be maintained under Section 18.322 will be kept.
5. *Pest control advisor registration.* The application form and other information required prior to approval of the application shall include the applicant's contact information, the applicant's employer contact information, and the location where records required to be maintained under Section 18.323 will be kept.
- B. The Office shall include the following provisions on each application form, as well as each certification, permit, and registration issued, to inform a person that by signing the application form, or by receiving a certification, permit or registration, such person is:
- 1. Agreeing to submit to the enforcement authority of the Office, including allowing the Office to inspect at locations outside the Reservation for the following reasons, including, but not limited to:
 - a. The applicant's mixing and loading of pesticides onto a service vehicle or aircraft, when the pesticides are intended for use within the Reservation, and

- b. The applicant's records of pesticide use within the Reservation;
2. Agreeing to submit to the jurisdiction of the administrative law judge, the Community Court, and the Community Court of Appeals for the express purposes of enforcement of this chapter;
3. Certifying the information contained in the application is true and accurate;
4. Acknowledging the receipt of a copy of this chapter and that the applicant understands their duties and responsibilities as contained in this chapter and any conditions imposed during the permitting process; and
5. Acknowledging that any person, including a person who is not an Indian, who knowingly violates any provision of this chapter may be assessed a civil penalty; that any person under the criminal jurisdiction of the Community may also be subject to criminal prosecution; and that any person who is not a member of the Community may also be subject to GRIC Code Title Eight, Chapter One, Removal or Exclusion of Non-Members.

18.313. Requirements to Obtain Permits, Certifications, and Registrations; Exempted Applicators.

A. Pesticide Use Permit. The following persons shall obtain a pesticide use permit before engaging or offering to engage in a pesticide regulated activity:

1. Owners or operators of a pest management business;
2. Regulated growers; and
3. Seed treaters

B. Producer Registration. A person wishing to be a producer shall obtain a producer registration before establishing a production facility and beginning the production of a pesticide product.

C. Community Certified Applicator Certification. An applicator shall obtain a Community certified applicator certification before offering to use, using, or supervise the use of a restricted use pesticide.

D. Community Applicator Certification. An applicator who otherwise does not possess a Community certified applicator certification or a certified applicator certification shall obtain a Community applicator certification before offering to use, using, or supervise the use of a general use pesticide.

E. Seller Registration. A person shall obtain a seller's registration before selling or offering to sell restricted use pesticides.

F. Pest Control Advisor. A pest control advisor shall register with the Office prior to making any recommendations on a Form 1080 or being employed as a person-in-charge.

G. Exempted Applicators. The following persons are exempt from the requirement to obtain a Community certified applicator certification under Section 18.313.C., and a Community applicator certification under Section 18.313.D.:

1. Persons applying general use pesticides on property where they reside.
2. Persons using ready to use non-restricted consumer pesticide products and non-restricted antimicrobial pesticide products.
3. Regulated growers applying general use pesticides on farm fields identified in their pesticide use permit application.
4. Any person making integrated pest management recommendations, conducting integrated pest management training, or offering integrated pest management consultation, if that person is following the Office's integrated pest management guidelines and not acting in the capacity of pest control advisor.
5. Applicators acting under the authority of a Community government department or program while in an emergency response.
6. Applicators acting under the authority of a federal or state government agency or political subdivision of the state while in an emergency response, provided that said agency provides to the Office for approval an advance written notice containing the reasons for the emergency and their plan for pesticide usage.
7. A person employed by a landscaping business that is exempt under Section 18.313.H.

H. Exempted Businesses: A landscaping business utilizing application equipment that collectively holds less than four gallons of mixed herbicide, except if the landscaping business' main purpose of business is weed control, is exempt from the requirement to obtain a Pesticide Use Permit under Section 18.313.A. To be exempt, there shall be no more than one piece of application equipment in use by the landscaping business at an address and the landscaping business shall not use herbicides that are sterilants, pre-emergents, or labeled with the words "restricted use."

18.314. Permits, Certifications, and Registration Fees.

The applicant shall remit a fee as follows with each application for a permit, certification and registration:

A. A pest management business shall remit the following fees for a pesticide use permit:

1. \$150 for a new application; and
2. \$100 for a renewal application.
3. A pest management business that fails to renew its permit within 30 calendar days after the expiration date of the permit shall remit the new application fee with its next application for a pesticide use permit.
4. Community government departments, programs and Community member owned pest management businesses are exempt from paying the pesticide use permit fee but must submit the required documents for a pesticide use permit.

B. A regulated grower shall remit the following fees for a pesticide use permit:

1. \$100 for a new application; and
2. \$50 for a renewal application.
3. A regulated grower that fails to renew its permit within 30 calendar days after the expiration date of the permit shall remit the new application fee with its next application for a pesticide use permit.
4. Community members are exempt from paying the pesticide use permit fee but must submit the required documents for a pesticide use permit.

C. A seed treatment establishment shall remit the following fees for a pesticide use permit:

1. \$100 for a new application; and
2. \$50 for a renewal application.
3. A seed treatment establishment that fails to renew its permit within 30 calendar days after the expiration date of the permit shall remit the new application fee with its next application for a pesticide use permit.

D. A producer shall remit a registration fee of \$50 with the registration of its production facility.

E. A seller shall remit a registration fee of \$50 with the registration of its facility.

F. An applicator shall remit the following fees for a Community certified applicator certification.

1. \$20 for a new application; and
2. \$10 for a renewal application;
3. A Community certified applicator that fails to renew their certification within 30 calendar days after the expiration date of the certification shall remit the new application fee with their next application for a certification.
4. Employees of Community government departments, programs and Community members are exempt from paying the Community certified applicator certification fee but must submit the required documents for a certification.

G. Community applicators are exempt from paying a fee.

H. A pest control advisor shall remit a fee of \$50 with the pest control advisor's registration.

18.315. Denial of Permits, Certifications, and Registrations.

The Office may deny a request for a permit, certification, or registration if the Office determines that the applicant does not or will not meet the requirements of this chapter. The Office may deny a permit, certification, or registration to an otherwise qualified applicant that has had a similar permit, certification, or registration revoked and may continue to deny the permit, certification, or registration for up to three years from the date of the initial revocation of the permit, certification, or registration.

18.316. Duration of Permits, Certifications, and Registrations; Renewals, Office's Timeline for Issuing Permits, Certifications, and Registrations.

A. A Community certified applicator certification shall expire on the same date as the authorizing certification pursuant to Section 18.312.A.2.b. All other permits, certifications, and registrations shall be valid for one calendar year. A permit, certification, or registration shall not be transferable. The holder of a permit, certification, registration or any other prior written approval must renew said permit, certification, registration or other written approval on an annual basis.

B. The Office shall issue the permit, certification, or registration to a qualified applicant as soon as practicable after receipt of the application form, provided the application is complete, the applicant remitted the appropriate fee, and the requirements of this chapter are met. As used in this paragraph "as soon as practicable" will vary depending on Office staffing, funding and workload and shall not be construed to be less than 20 business days after the Office determines the application to be complete.

18.317. Restricted Use Pesticides; General.

Any person engaging in a pesticide regulated activity involving a restricted use pesticide shall do so only in strict conformity with the terms and provisions of this chapter, the Office's policies, and regulations issued pursuant thereto.

18.318. Restricted Use Pesticides; Categories of Community Certified Applicators.

A. A Community certified applicator wishing to use or supervise the use of a restricted use pesticide within the Reservation shall be certified in one or more of the following categories; and may only use or supervise the use of a restricted use pesticide in the categories for which the Community certified applicator is certified.

1. Agricultural pest control.
 - a. Plant. This category includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands.
 - b. Animal. This category includes commercial applicators using or supervising the use of restricted use pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.
2. Forest pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.
3. Ornamental and turf pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
4. Seed treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.
5. Aquatic pest control. This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing

or running water, excluding applicators engaged in public health related activities included in Section 18.318.A.8.

6. Right-of-way pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.
7. Industrial, institutional, structural and health related pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.
8. Public health pest control. This category includes State, Federal or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.
9. Regulatory pest control. This category includes State, Federal or other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.
10. Demonstration and research pest control. This category includes:
 - a. Individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration; and
 - b. Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes: State, Federal, commercial and other persons conducting field research on or utilizing restricted use pesticides.
11. Wood destroying insect control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control wood destroying insects in or about a structure by a means other than use of a fumigant.
12. Fumigation. This category includes commercial applicators using or supervising the use of a restricted use pesticide to fumigate soil, in an in situ agricultural

commodity fumigation, in storage structures, in transportation vessels, to human dwellings, and to control burrowing rodents.

18.319. Office Request for Records.

A. Upon written request by the Office for the production of records, any person regulated under this chapter shall:

1. Make the records required under this chapter available for review by the Office within 24 hours or by a later date specified by the Office.
2. Make the records available at the Office unless another location is agreed upon.
3. Be available to interpret the submitted records if requested by the Office.

B. If a person cannot timely comply with a request made under Section 18.319.A., the person shall immediately provide written notice to the Office, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

C. If the Office requests a record from any person regulated under this chapter, when there may be an immediate risk to the health or safety of an individual, non-target animal, or the environment, the person shall provide the record to the Office within one hour.

18.320. Pest Management Business Records.

A. Nonagricultural pest management business: General – A pest management business that engages in a nonagricultural pesticide regulated activity shall make and preserve accurate records of all pesticide applications performed for a period of no less than two years from the date of the pesticide application. The record of a pesticide application shall contain, at a minimum, the following:

1. Name and address of the person for whom the pesticide was applied, and a description or address of the site where the application occurred;
2. Date of the pesticide application;
3. Target pest or purpose of pesticide application;
4. Trade name or common name of the pesticides or articles used and its U.S. EPA registration number;
5. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations; and

6. Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applicator and the name and certification number of the applicator providing supervision.

B. Nonagricultural pest management business: Restricted use pesticides – In addition to the records required under Section 18.320.A., a pest management business that engages in a nonagricultural pesticide regulated activity that uses a restricted use pesticide shall keep the following additional information:

1. Date of purchase or acquisition of the restricted use pesticide;
2. Quantity of the restricted use pesticide purchased or acquired;
3. Name and applicable certification or license number of the applicator making the restricted use pesticide purchase; and

C. Pest management business: Wood Destroying Insects – In addition to the records required under Sections 18.320.A and B, a pest management business conducting pesticide application to control wood destroying insects shall include the records required under Section 18.336 for a period of not less than five years from the date of the last pesticide application for either a pre-construction treatment, a new-construction treatment or a post-construction treatment.

D. Agricultural pest management business: – A pest management business that engages in an agricultural pesticide regulated activity shall make and preserve accurate records of pesticide applications performed for a period of no less than two years from the date of the pesticide application. The records of a pesticide application shall be either a completed Form 1080 or contain at a minimum all of the following:

1. Name and permit number of the seller;
2. Date the recommendation is written;
3. Name and permit number of the regulated grower upon whose site the pesticide will be applied;
4. County where the site is located;
5. Pest conditions present;
6. Whether the site is within a pesticide management area;
7. Anticipated date of harvest;
8. Restricted entry interval;
9. Label days to harvest;

10. Date recommended for the pesticide application;
11. Specific site being treated;
12. Township, range, and section of the site;
13. Number of acres or sites in each section being treated;
14. Additional field description, if any;
15. Brand name and U.S. EPA registration number of the pesticide to be applied or number of the pesticide regulated under FIFRA section 18, 7 U.S.C. § 136p to be applied;
16. Rate and unit of measure per acre or dilution per 100 gallons;
17. Total quantity of pesticide concentrate to be applied;
18. Total acres to be treated and total volume per acre or total number of sites to be treated;
19. Whether a supplemental label is required;
20. Method of pesticide application;
21. Label restrictions or special instructions, if any;
22. Name of the custom applicator making the application;
23. Anticipated pesticide delivery location; and
24. Signature and credential number of the regulated grower or pest control advisor making the recommendation.

E. Pesticide disposal records: Restricted use pesticides – Pest management businesses shall make a record of each restricted use pesticide disposed, sold, lost, or otherwise relinquished. The pest management business shall include the following information in the disposal record:

1. Date of disposal;
2. Trade name of pesticide;
3. EPA registration number of pesticide;
4. Quantity of pesticide disposed;
5. Percent active ingredient in the pesticide disposed,

6. Method of disposal,
7. Location and type of disposal site or service; and
8. Name and certification or license number of the applicator making the pesticide disposal record on behalf of the pest management business.

18.321. Regulated Growers Records.

A. Following an application to a field on an agricultural establishment of a restricted use pesticide, a pesticide registered under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v, a regulated grower shall make and preserve accurate records for a period of no less than two years from the date of the pesticide application on either a completed Form 1080 or contain at a minimum all of the following:

1. Name of the Community certified applicator and the applicator's Community certified applicator certification number;
2. Name and permit number of the seller;
3. Name of the pesticide applied and its EPA registration number;
4. Date and time of application;
5. Name of regulated grower;
6. Method of application;
7. Crop name and the number of acres treated with the pesticide;
8. Rate per acre of the active ingredient or formulation of the pesticide;
9. Total volume of pesticide used per acre; and
10. County, range, township, and section of the field that received the application.

B. Following an application to a non-field of a restricted use pesticide, a pesticide registered under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v, a regulated grower shall make and preserve accurate records for a period of no less than two years from the date of the pesticide application on either a completed Form 1080 or contain at a minimum all of the following:

1. The information requested under subsection Section 18.321.A.1. through A.10;
2. Item treated;

3. Rate of the active ingredient or formulation of the pesticide per item treated;
4. Total volume of pesticide used in the application; and
5. Application site location by county, range, township, and section, or by physical address.

C. Pesticide disposal records: Restricted use pesticides – Regulated growers shall make a record of each restricted use pesticide disposed, sold, lost, or otherwise relinquished. The regulated grower shall include the following information in the disposal record:

1. Date of disposal;
2. Trade name of pesticide;
3. EPA registration number of pesticide;
4. Quantity of pesticide disposed;
5. Percent active ingredient in the pesticide disposed,
6. Method of disposal,
7. Location and type of disposal site or service; and
8. Name and certification or license number of the applicator making the pesticide disposal record on behalf of the pest management business.

18.322. Seller Records.

A seller of a restricted use pesticide, device, or agricultural pesticide shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device for a period no less than two years from the date that possession of the pesticide or device is relinquished. The records shall include all of the following:

- A. Bill of lading showing receipt of the pesticide or device;
- B. Current pesticide inventory;
- C. Seller's dated sales receipt, delivery receipt, invoice of transaction, delivery, or disposition of the pesticide;
- D. Name and address of the person that purchased the pesticide or device;
- E. Pesticide brand name and the U.S. EPA registration number;

F. The experimental use permit number granted by the U.S. EPA under FIFRA section 5, 7 U.S.C. § 136c, if applicable;

G. The emergency exemption permit number granted by the U.S. EPA under FIFRA section 18, 7 U.S.C. § 136p, if applicable;

H. The state special local need registration number issued under FIFRA section 24, 7 U.S.C. § 136v, if applicable; and

I. Quantity of the pesticide sold to purchaser.

18.323. Pest Control Advisor Records.

A pest control advisor shall keep a copy of each Form 1080 that the pest control advisor has completed for a period of no less than two years from the date of the pesticide application listed on the form.

18.324. Advance Notice of Pesticide Applications to the Office.

The following persons shall provide verbal notification via telephone call, or written notification via fax, email, or hand delivery to the Office at least eight hours in advance of a planned pesticide application. Unless otherwise stated in Section 18.324.A.1. through A.9 below, the notice shall include, but is not limited to, the date and approximate time the application is to take place, the specific chemical(s) by trade name and the location of planned pesticide application.

A. A pest management business licensed by the Arizona Department of Agriculture as a custom applicator shall provide a written notice of a planned agricultural pesticide application by submitting a copy of the written instructions portion of a Form 1080 signed by a pest control advisor or the regulated grower.

B. A pest management business licensed by the Arizona Office of Pest Management shall provide notice of a planned restricted use pesticide application, a planned pesticide application authorized under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v, or a planned fumigant application.

C. A regulated grower, who is also a Community certified applicator, applying a fumigant, a restricted use pesticide, or a pesticide authorized under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v, shall provide written notice of the planned pesticide application by submitting a copy of the written instructions portion of a Form 1080 signed by the regulated grower.

D. A pest management business applying a pesticide for wood destroying organism treatment.

E. A seed treater applying a fumigant pesticide.

F. An applicator applying a pesticide subject to a National Pollutant Discharge Elimination System permit under Clean Water Act section 402, 33 U.S.C. § 1342.

G. An applicator applying a pesticide while acting under the authority of a Community government agency in an emergency response mode.

18.325. Notification of Pesticide Applications to Schools; School Duties; Exemptions.

A. All pesticide applications to school property (both buildings and grounds used for the instruction and recreation of students) must be performed by a certified applicator, certified in the appropriate category of the pest being addressed

B. A pest management business must notify the school at least 72 hours in advance of any pesticide application at the school. The 72-hour notice shall include the following:

1. Date and time application is to occur;
2. Description of application areas where pesticide is to be applied;
3. Pest being targeted;
4. Pesticide brand name;
5. Concentration;
6. Rate of application;
7. A copy of the pesticide label;
8. A copy of the safety data sheet; and
9. Any use restrictions required by the pesticide label.

C. The following pesticide applications are exempt from the 72-hour notification requirements prescribed in Section 18.325.B:

1. Non-residual pesticide applications performed or contracted by a federal or Community public health department and program for vector control outside of a school building.
2. Emergency pesticide applications to control harmful pests (*i.e. stinging wasps & bees*) that pose an immediate threat to the public health. Under these circumstances the pest management business shall do the following:

- a. Notify the school before the application with a statement of the pest problem, treatment procedure, area to be treated and approximate time of the application;
 - b. Immediately after the application has been completed, notify the school of the name of the pesticide applied, the formulation, the strength and dosage, and the date and time of the application, and provide the pesticide label; and
 - c. Post a notice in the treated area immediately after the application. The posting shall include the name of the pesticide, the date and time of application and telephone number of the pest management business.
3. Antimicrobials disinfectants, germicides, sanitizers, and swimming pool chemicals.
 4. Block, gel, or paste-type bait that is a toxicity category III or IV formulation of insecticide pursuant to 40 CFR § 156.62 and that is secured in an enclosed, tamper-resistant bait station placed in an area inaccessible to children.
 5. Personal or self-applied insect repellants.
 6. Any pesticide exempt from regulation by the U.S. EPA pursuant to the FIFRA.
 7. Those pesticide applications made more than 48 hours before a scheduled school day.

D. At least 48 hours prior to a pesticide application at a school, the school must provide a notice of the planned pesticide application details to parents, guardians, and staff members requesting to be notified. Parents, guardians and staff must be registered with the school to receive such advance notice. The school shall provide the 48 hour advance notice as follows:

1. Oral notification to pupils and employees during a regular school session; and
2. Written notification to parents, guardians or an individual authorized by a parent or guardian during a regular childcare session.

E. The school shall post signs to identify pesticide application areas or require the pest management business to fill out and post the required signs.

F. The school shall maintain written records of pesticide application notifications for a period of at least two years after the application. The school is not required to maintain records of pesticides that are exempt pursuant to Section 18.325.C.

18.326. Notices to Consumers.

A. Immediately following an application, Non-agricultural pest management businesses shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the following:

1. Name and address of the customer;
2. Specific site to which a pesticide was applied;
3. Date of service;
4. Target pest or category of service;
5. Trade name of pesticide applied;
6. EPA registration number of restricted use pesticide applied;
7. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations;
8. Name and certification number of the applicator or if the applicator is uncertified, the name of the uncertified applicator and the name and certification number of the applicator providing supervision; and
9. Following statement printed in at least an eight-point font and shall include the words:

"WARNING - Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information contact [applicator's name and certification number] at [applicator's telephone number]."

- B. The applicator may provide the notice required by subsection (A) electronically.

18.327. Notification of Spillage; Clean-up Procedures.

A. All persons regulated under this chapter must notify the Office as soon as a person learns of the spillage of one gallon or more of a pesticide in concentrated form, or the spillage of five gallons or more of a diluted pesticide, or whenever a spill of a pesticide may present a hazard to humans in the area.

B. In the event a spillage of a pesticide solution occurs, the applicator or trained personnel wearing protective equipment as required by the pesticide label shall contain the spillage, and clean-up the affected area.

C. The materials used to clean-up a pesticide spillage shall be placed in tight, non-combustible containers, and then transported to an authorized disposal site within 30 calendar days.

18.328. Pesticide Sales.

A. Any person who sells pesticides shall sell only pesticides that have an U.S. EPA or an Arizona Department of Agriculture registration number.

B. A seller shall comply with all of the following:

1. Employ a person-in-charge.

2. Only sell a restricted use pesticide for use within the Reservation to any of the following:

a. A regulated grower who has a valid pesticide use permit and who is also a Community certified applicator.

b. A regulated grower who has a valid pesticide use permit and who arranges for a Community certified applicator to receive and apply the restricted use pesticide.

c. To a pest management business with a valid pesticide use permit and who employs a Community certified applicator.

3. Only sell an agricultural pesticide for use within the Reservation to a regulated grower who has a valid pesticide use permit.

C. Any person who sells pesticides in a marketplace shall comply with all of the following requirements:

1. Store the pesticides according to the label instructions.

2. Do not store pesticide product in close proximity to or over food, feed, drugs, eating utensils, beverages, or tobacco products.

3. No pesticide shall be stored or sold in a container, which has been used for food, feed, beverages, drugs, or cosmetics or stored in any way that could cause a person to reasonably mistake the pesticide for food, feed, beverages, drugs, or cosmetics.

4. Pesticides containers shall be free from corrosion, leakage, and pesticide contamination. If a container does not meet these standards, it must be stored in a separate location outside of the marketplace.

18.329. General Provisions for Pesticide Usage.

A. Unless exempted from registration by either the U.S. EPA or the Arizona Department of Agriculture, a person shall only use those pesticides registered by both the U.S. EPA and the Arizona Department of Agriculture.

B. A person shall use the pesticide in accordance with the pesticide's label and labeling instructions. A person shall not use or instruct another to use any registered pesticide in a manner inconsistent with its labeling.

C. Pesticides approved under FIFRA section 5, 7 U.S.C. § 136c, section 18, 7 U.S.C. § 136p, or section 24, 7 U.S.C. § 136v, shall only be used in the Community if a person submits to the Office a use plan and receives from the Office an approval for the use plan of such pesticides and the person uses such pesticides in accordance with the approved use plan.

D. All persons shall comply with the specifications on the label of the product being used regarding the use of personal protective clothing and equipment. Pest management businesses and regulated growers shall instruct employees to use protective clothing and equipment while engaged in the mixing, the loading, and the application of pesticides. Community pest management businesses and regulated growers shall also instruct their employees about how to maintain, clean and store such items when not in use.

E. An applicator applying a pesticide shall not allow the pesticide to drift onto a non-target area that will cause any damage or unreasonable adverse effect.

F. An applicator applying a pesticide shall not allow the pesticide to come into contact with any person, whether the contact is directly or through drift.

G. An applicator applying a highly toxic or odoriferous agricultural pesticide shall not apply or allow the pesticide to drift within a quarter mile of a property boundary of a school, day care center, detention facility, health care institution, or residences.

H. All openings on service containers and portable application equipment shall be equipped with covers that prevent splashes and spills.

I. All service containers shall be translucent or have a means to indicate externally the internal liquid level in the container. All portable application equipment shall be constructed in a manner that allows the applicator to detect the level of liquid.

J. A pest control advisor, a pest management business licensed by the Arizona Department of Agriculture as a custom applicator, and a regulated grower shall comply with the Arizona Department of Agriculture rules pertaining to the Form 1080 except they do not need to submit the completed Form 1080 to the Office unless requested to do so by the Office. A completed Form 1080 is one signed by the applicator after the application of the pesticides.

K. A pest control advisor and a regulated grower shall be responsible to list on the Form 1080 any information pertaining to buffer zones, endangered species, and sensitive crops, which the applicator should be aware of to prevent pesticide drift from causing damages.

L. A pest management business licensed by the Arizona Department of Agriculture as custom applicator shall have a Community certified applicator within direct supervision at the time the restricted use pesticide is used.

M. A pest management business licensed by the Arizona Office of Pest Management to engage in the business of structural pest control shall have a certified applicator physically present at the time and place the pesticide is used.

N. A person shall not dump, negligently store, or leave unattended any pesticide, service container, or pesticide container, or part of a container, at any place or under any condition.

18.330. Pesticide Usage; Ground Application of Pesticides Restrictions.

A. Persons transporting pesticides within the Reservation shall transport the pesticides in closed containers secured on the transporting vehicle in a manner to prevent spillage or leakage of chemicals.

B. Ground applications are prohibited whenever the constant wind velocity exceeds 10 miles per hour at the nozzle height. The Office may use an anemometer during monitoring activities to determine compliance.

C. An applicator of agricultural pesticides may dispense the rinsate resulting from the washing and rinsing of equipment used in ground application of agricultural pesticides onto the field where such agricultural pesticides were applied. An applicator of non-agricultural pesticides is prohibited from dispensing the rinsate resulting from the washing and rinsing equipment used in ground application of non-agricultural pesticides onto land within the Reservation.

D. An applicator of agricultural pesticides applying pesticides using ground equipment shall not apply or allow the agricultural pesticides to drift within 10 feet of a property boundary of a school, day care center, detention facility, health care institution or residential housing, except:

1. If the occupant of the residential housing gives written consent to encroach into the 10 foot restricted area; or
2. If any authorized school activities will begin after the restricted-entry interval specified on the agricultural pesticide label will expire.

18.331. Pesticide Usage; Aerial Agricultural Pesticide Application Restrictions.

A. An aircraft pilot shall not apply agricultural pesticides under any of the following conditions:

1. By fixed wing aircraft within the boundaries of a pesticide management area unless the Office has declared an agricultural emergency. A helicopter may be used to conduct non-emergency aerial agricultural pesticide applications within the pesticide management area.
2. Within one-fourth mile of a school, a health care institution, residential treatment facility, detention facility, or a residential area comprised of at least six residences adjoining the field to be sprayed.
3. Within 500 feet of an operating school bus.
4. Within 100 feet of any person.
5. Within the greatest distance of either 10 feet of the outer boundary or outer fence line of any residence or within 100 feet from the residence adjoining the field to be sprayed without the occupant or owner's consent.
6. Whenever the wind velocity exceeds five miles per hour, unless the pesticide label specifies a different wind speed.
7. Within 100 feet of a residential or commercial structure located outside the Community's external boundary.
8. Over the surface of, or in waters of the United States as defined in 40 CFR § 122.2.

B. An aircraft pilot shall dispense an agricultural pesticide in such a way as to prevent drift within the grounds of a residence, school, health care institution, residential treatment facility, or detention facility.

C. An aircraft pilot shall not transport agricultural pesticides over a school, a health care institution, a residential treatment facility, or a detention facility.

18.332. Pesticide Storage.

A. An individual storing pesticides for anything other than use at the individual's own residence shall store the pesticide according to the pesticide label instructions and comply with this section and all other provisions of this chapter.

B. Businesses and government departments and programs that do not employ a Community applicator or a Community certified applicator shall store antimicrobials and general use pesticides that come in household size containers in a closet that is secure from unauthorized

entry. Pesticides shall not be stored in the same closet where food, feed, drugs, eating utensils, beverages, or tobacco products are stored. Pesticide shall not be stored in any container that has been used for food, feed, beverages, drugs or cosmetics. Pesticides shall not be stored in any way that could cause any person to reasonably mistake the pesticide for food, feed, beverages, drugs or cosmetics.

C. Pest management businesses and regulated growers shall store pesticides in a storage structure that is secure from unauthorized entry. If a person is unable to limit access to the storage structure to only authorized personnel, the pesticides shall be stored in a roofed concrete or metal structure with a lockable door.

1. The storage structure shall comply with all of the following:
 - a. Be designed to keep the pesticides out of direct sunlight and protected from rain;
 - b. Have the floors, walls, and shelving built of a non-absorbent, easily cleanable material;
 - c. If the storage structure is enclosed, be constructed with ventilation to the outside air to prevent build-up of chemical odors to preclude chemical injury to persons;
 - d. Have adequate lighting to read pesticide labels;
 - e. Have an emergency eyewash station;
 - f. Have washing facilities, which shall include soap, fresh water and single use (disposable) towels;
 - g. Have an operational fire extinguisher, type ABC, or that is otherwise appropriate for the pesticides stored;
 - h. Have a first-aid kit with contents that are appropriate for the type of pesticides being used;
 - i. Have emergency medical information, including telephone numbers for poison control centers;
 - j. Have absorbent materials capable of absorbing spills and leaks of at least one gallon and over-packs and/or other equipment to collect and store contaminated material;

- k. Have both a specimen label and safety data sheet for each pesticide stored at the facility that are to be readily accessible to all employees at all times; and
 - l. Have a sign conspicuously placed in the entrance or access area that warns individuals that pesticides are stored inside.
2. Pesticides shall be stored in the storage structure as follows:
- a. Not stored above or below incompatible chemicals, such as fertilizers, gasoline, or other fuels; and
 - b. Liquid formulations stored below dry formulations.
- D. A person using a service container to store or transport a pesticide concentrate or registered ready-to-use pesticide, shall place a durable and legible label or tag on the service container that lists:
- 1. Name, e-mail address, if applicable, and telephone number of the applicator or custom applicator using the pesticide;
 - 2. Brand or trade name of the pesticide;
 - 3. EPA registration number;
 - 4. Name and percentage of the active ingredient;
 - 5. Dilution, if any, in the service container;
 - 6. EPA-assigned signal word (danger, warning, or caution) for the registered label; and
 - 7. The phrase "KEEP OUT OF REACH OF CHILDREN."

18.333. Requirements for Service Vehicles.

A. Community applicators, certified applicators and Community certified applicators shall store pesticides on their service vehicles in their original containers, in portable application equipment, or in a service container. The pesticides shall be kept locked when on an unattended service vehicle or within view and under the direct and personal supervision of the employee responsible for that service vehicle. A service container is one used to hold, store, or transport a pesticide either as a concentrate or as a ready to use mixture.

B. All service vehicles shall be equipped with the following:

1. Measuring and pouring devices compatible with the pesticides stored, transported, or used on the vehicle;
2. Personal protective equipment and clothing, as required by pesticide labels, suitable for the pesticides stored, transported or used on the service vehicle;
3. Absorbent materials capable of absorbing or containing spills and leaks of up to one gallon;
4. Over packs and/or other equipment to collect and store contaminated materials;
5. A basic first-aid kit, which shall contain information regarding the practical treatment for pesticide poisonings and emergency medical information, including telephone numbers for poison control centers;
6. A pesticide label and safety data sheet for each pesticide transported or stored on the vehicle;
7. A change of clothing for use in the event that the applicator's garments are contaminated while using a pesticide;
8. A minimum of one gallon of potable water;
9. Soap and single use (disposable) towels for emergency washing of hands, face or body: and.
10. Emergency eye wash kit.

C. Applicators, excluding agricultural applicators, shall display the name of their pest management business on each side of their service vehicle. The name shall be in bold lettering at least two inches high, in distinctly contrasting color with the background, and shall be in plain view of the public. A Community governmental entity need only display the Community's tribal seal on their service vehicle.

18.334. Pesticide and Pesticide Container Disposal.

A. Excess quantities of the pesticide, including any rinsate containing the pesticide, other material used to contain or collect excess or spilled quantities of the pesticide, and pesticide containers are a waste, which may be either a solid waste or a hazardous waste. Unless otherwise authorized under Title 18, Chapter 2, Solid Waste Disposal, of the Gila River Indian Community Code, no person shall dispose of a solid waste or a hazardous waste on the Reservation.

B. A person shall provide for the safe storage of the pesticide waste until the person can transport the pesticide waste off the Reservation for reuse, recycling, disposal or other federal or state approved method. A person shall not construe this provision as authorization to

violate state or federal pesticide and waste management laws once the waste pesticide leaves the Community's jurisdiction.

C. The person shall take the following steps before transporting any pesticide container off the Reservation:

1. Unless the container is a pressurized container, a paper bag, or container designed for reuse, the container shall be triple rinsed and punctured or crushed to render the container incapable of holding any material. The person shall place the rinsate in a service container or in the application equipment for use at a site, or the rinsate shall be taken off the Reservation as a pesticide waste;
2. A pesticide container that is a combustible bag or package, the person shall appropriately and thoroughly empty the container and either fold and tie into bundles; or enclose securely in a secondary container and labeled as containing either a non-hazardous pesticide waste or as a hazardous waste and handle accordingly.
3. A reusable container that the person no longer wants, the person shall return the reusable container to the seller in accordance with the seller's instruction or follow the requirements under Section 18.334.C.2.

18.335. Wood Destroying Insect Control; Certifications Required.

A. Only a pest management business that employs a certified applicator certified in the appropriate category(s), may do either of the following:

1. Use pesticides to prevent or control termites and other wood destroying insects.
2. Conduct a wood destroying insect inspection, prepare a treatment proposal, and complete a wood destroying insect action report.

18.336. Treatment of Wood Destroying Insects; General Provisions.

A. A pest management business conducting termite treatments shall apply a chemical labeled as a termiticide in accordance with this chapter and the termiticide label. A termiticide shall not be applied at a rate less than label rate. A pesticide that is engineered by its pesticide producer to act as a repellent shall not be used for treatment of termites.

B. Immediately after completing a termite treatment, the pest management business shall securely affix a tag to the construction site. Tags shall contain the following information at a minimum:

1. Name of the pest management business;

2. Address and telephone number of the pest management business;
3. Pesticide use permit number;
4. Location of the project;
5. Date of the application;
6. Start time of the application;
7. Completion time of the application;
8. Trade name of the chemical(s) used;
9. Strength of the chemical preparation used, written as a percentage of the active ingredient;
10. Number of gallons of chemical preparation applied;
11. Square footage treated;
12. Linear footage treated;
13. Type of construction;
14. Signature or name of the certified applicator; and
15. Certification number of the certified applicator or, if the applicator is not certified, name and number of supervising certified applicator.

C. If a duplicate tag is requested, the applicator shall mark the subsequent tags "DUPLICATE" before providing the tags to the requester. In the event that a treatment site is abandoned before it is complete, then the tag shall indicate what portion of the treatment was accomplished, be marked "TREATMENT INCOMPLETE" and be prominently posted at the site of the treatment.

D. The information written on the tag shall be an accurate representation of the treatment performed and made a part of the pest management business' treatment records.

18.337. Wood Destroying Insect Action Report.

Within 30 days of completion of a treatment project, the pest management business shall report to the Office, on a form approved by the Office, the following data:

A. The name and certification number of the certified applicator that performed the treatment project. If the applicator was not a certified applicator then the name and certification number of the certified applicator that supervised the treatment;

- B. Address or location of the treatment project;
- C. Name of the pest management business;
- D. Type of treatment;
- E. Target pest; and
- F. Any other information as required by the Office.

18.338. Fumigation.

A. Only a pest management business employing a certified applicator certified in the category of fumigation may use a fumigant to treat a building or other structure to treat an agricultural product, treat the soil, or control rodents.

B. A certified applicator that proposes to use a fumigant, which the label or labeling requires the applicator to have a fumigation management plan, shall provide the plan to the Office before using the fumigant.

C. A certified applicator shall be present at the site of the fumigation of a structure from the time the fumigant is released until the time the fumigation is complete and the structure is released for safe occupation. The certified applicator shall deter entry into the structure by routinely inspecting the structure under fumigation at least once each hour. The certified applicator shall secure all entrances to the structure in such a manner as to prevent entry by anyone other than the certified applicator. The structure must remain secured until the structure is released for safe occupancy.

D. In addition to any warning requirements on a label the certified applicator is using, the following shall apply:

1. Prior to the commencement of fumigation, warning signs shall be posted in plainly visible locations on or in the immediate vicinity of all pedestrian entrances to, and on every side of, the space under fumigation;
2. These signs shall be firmly attached and shall not be removed until fumigation and ventilation are completed and the spaces under fumigation are safe for occupancy;
3. Warning signs shall be printed in red on white background and shall contain a skull and crossbones and the following words in bold letters not less than two inches in height: "DANGER" and "FUMIGATION" or "POISON GAS." The warning signs shall also state in letters not less than 1/2 inch in height the name of the fumigant, the date and time the fumigant was injected, and the name, address and telephone number of the company performing the fumigation; and

4. A pest management business performing fumigation in spaces normally occupied by persons or domestic animals shall use a warning agent with all fumigants that lack such properties.

18.339. Violations.

In addition to any prohibitions set forth in this chapter, violations of this chapter include, but are not limited to:

A. A person who violates any requirement or provision of this chapter or regulation issued pursuant to any requirement or provision of this chapter.

B. A person who uses any registered pesticide in a manner inconsistent with its label and labeling or applicable regulations.

C. A person who conducts a pesticide regulated activity before obtaining a permit, certification, registration, or other Departmental approval required under this chapter.

D. A person who violates any condition of a permit, certification, registration, or other Departmental approval issued pursuant to this chapter.

E. A person who aids or abets any person to evade the provisions of this chapter or allows one's permit, certification, or registration to be used by another person.

F. A person who makes false or fraudulent records, reports, or proposals, or falsifies any other documents required by this chapter.

G. A person who misrepresents a material fact in obtaining a permit, certification, registration, or other Departmental approval required under this chapter.

H. A person who misrepresents a material fact for the purpose of defrauding or deceiving the Department or the owner or occupant of the property at which structural pest control activities are conducted.

I. A person who fails to maintain or refuses to allow inspection of any records or other documents required under this chapter.

J. A person who refuses the Department lawful access to a vehicle or entry onto land or a structure to conduct an inspection of a pesticide regulated activity or to take documentary or physical samples.

18.340. Civil Enforcement.

- A. General Provisions.
1. The Department is authorized to implement compliance and enforcement procedures to address any violation of this chapter or a permit, certification, or registration authorized by this chapter.
 2. The measures available to the Department to achieve compliance for Pesticide Code provisions are listed below. The Department shall seek voluntary compliance before implementing more stringent enforcement measures, unless the noncompliance represents an imminent and substantial endangerment to human health or the environment requiring stronger measures. Thus, if a notice of violation does not achieve the intended results, the Department may institute additional measures including the issuance of an administrative compliance order, seeking injunctive relief and civil penalties in the Community Court, or revocation or suspension of a permit, certification, or registration under Section 18.340.G.
 - a. Notice of violation;
 - b. Administrative compliance order with civil penalties (administrative); and
 - c. Permit, certification, and registration suspension or revocation; and
 - d. Civil penalties (judicial).
 3. When the Department identifies a violation of this chapter either through an inspection or by other means, the Department personnel will decide what type of compliance and enforcement tools to use based on the following considerations:
 - a. Risk to human health, the environment and quality of life;
 - b. The degree of recklessness, negligence or deliberateness of the violator;
 - c. The violator's previous compliance history; and
 - d. Financial advantage gained by non-compliance.

4. Nothing herein shall preclude the Department from taking immediate action in response to an imminent or substantial endangerment to human health or the environment.
5. The Department may seize and quarantine any pesticide that is adulterated, misbranded, or detrimental to the public health, or that is otherwise not in conformity with any applicable provision of this chapter. The cost for disposing of such chemicals will be placed upon the owner of the chemicals after the Department complies with the provisions of Section 18.340.F. or any other applicable remedies available to the Department.
6. The Department may cooperate or enter into formal agreements with any agency of the State of Arizona or of the federal government for the purpose of enforcing any provision of this chapter.
7. Duly authorized GRIC law enforcement officers may provide coordinated assistance to the Department for engaging in an enforcement action under this chapter. Such assistance may include providing civil stand-by and/or other applicable civil services.
8. If the Department brings an enforcement action against a certified applicator or Community certified applicator and if the applicator is held responsible by the administrative or judicial body, upon the final disposition of the case the Department shall notify the agency certifying the applicator of the final decision.

B. Report and Investigation of Damage from Pesticides. Any person who alleges any loss, non-performance, or damage as a result of the use or application of a pesticide or device should report the occurrence to the Department within five business days from the time that the occurrence became known to such person. The failure to file a report of loss is not evidence that no loss, non-performance, or damage occurred, and is not a bar to the maintenance of a civil action to recover damages for loss, non-performance, or damage, or to an enforcement action by the Department.

1. The report shall include, so far as is known to the claimant:
 - a. The name and address of the claimant.
 - b. The type, kind and location of property allegedly injured or damaged.
 - c. The date the alleged loss, non-performance or damage occurred.

- d. The name of the person allegedly responsible for the loss, non-performance or damage.
 - e. The suspected pesticide or action that caused the loss, non-performance or damage.
 - f. The name of the owner or occupant of the property on which the loss, non-performance or damage occurred.
2. Based on information received from the report of loss, non-performance or damage, the Pesticide Control Officer or his agent may investigate and initiate enforcement proceedings as necessary.
 3. If the Pesticide Control Officer, following an inspection or investigation determines that an alleged violation occurred, the Pesticide Control Officer may issue a written notice of violation, pursuant to the procedures in Section 18.340.E. The notice of violation should be issued within 20 days of the Department's investigation and determination that an alleged violation has occurred.
- C. Inspections and Entry.
1. The Department shall make such investigations and inspections of persons or entities engaging in pesticide activities or activities regulated by this chapter as are necessary to ensure compliance with the provisions of this chapter and permits, certifications, or registrations issued pursuant to this chapter.
 2. The Department and any of its duly authorized officers, presenting proper identification as such, may enter the property of any person engaging in pesticide regulated activities at reasonable times in order to inspect or investigate the conduct of such activities to ensure compliance with this chapter and with permits, certifications, or registrations issued pursuant to this chapter.
 3. As part of its inspection, the Department may obtain samples of pesticides, devices, and containers, and may make copies of labels and records. The analysis of pesticide samples, including pesticide residue, may be admitted as evidence of detrimental exposure to pesticides and/or to validate correct pesticide use.
- D. Administrative Inspection Warrants.
1. In the event that consent to entry is withheld or consent is otherwise barred, the Department may obtain an administrative inspection warrant from a judge of the Community Court. A judge of the Community Court, upon proper oath or

affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections or investigations as part of a general plan of inspection or investigation under this chapter or if there is probable cause to believe that a violation of this chapter or of permits, certifications, or registrations issued pursuant to this chapter has occurred or is occurring, including seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or regulations hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

2. A warrant shall be issued only upon an affidavit of an employee of the Department having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe the grounds exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - a. State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the warrant;
 - b. Be directed to an employee authorized by the Department to execute it;
 - c. Command the person to whom it is directed to allow the inspection of the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
 - d. Identify the item or types of property to be seized, if any;
 - e. Direct that it be served during normal business hours and designate the judge to whom it shall be returned;
3. A warrant issued pursuant to this section must be executed and returned within 10 calendar days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is seized, together with a receipt for the property seized. The return of the warrant to the Community Court shall be made promptly, accompanied by a

written inventory of any property seized. The inventory shall be made in the presence of the person executing the warrant and the person from whose possession or premises the property was seized, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was seized and to the applicant for the warrant.

4. The judge who has issued a warrant shall attach a copy of the return and all papers returnable in connection with the warrant and file them with the clerk of the court in which the inspection was made.
 5. In the event entry is withheld or barred, the Department may exercise its right to suspend or revoke a person's permit, certification, or registration pursuant to Section 18.340.G., or other penalty as provided for under this chapter.
- E. Notice of Violation.
1. For routine acts of noncompliance, the Department will issue a written notice of violation for each violation identified. Unless a longer period of time is specified in the notice of violation, compliance must be achieved within 30 calendar days of the issuance of the notice. For the purposes of this section, routine acts of noncompliance means situations where the noncompliance does not constitute an emergency situation and no imminent and substantial endangerment to public health or the environment exists.
 2. A notice of violation issued pursuant to this subsection shall state with reasonable specificity the nature of the violation, including the requirement or provision of this chapter and/or the terms or conditions of a permit, certification, or registration issued under this chapter, which has been violated. The notice of violation may be conditional and require a person to refrain from particular acts unless certain conditions exist. Written notices of violation issued by the Department shall be transmitted to the alleged violator by certified mail or by personal service.
 3. The Department is not required to issue a notice of violation prior to issuing an administrative compliance order, or seeking injunctive relief and civil penalties in the Community Court.
- F. Administrative Compliance Orders.

1. 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, certification, or registration issued under this chapter, the director may issue an order requiring compliance as expeditiously as practicable, but in no event shall compliance be achieved later than one year after the order was issued. The order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.
 2. A compliance order issued pursuant to this subsection 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 a hearing if a hearing is requested in writing within 30 calendar days after the date of issuance of the order.
 3. A compliance order becomes final and enforceable in the Community Court unless, within 30 calendar days after receipt of the compliance order, the recipient of the order requests a hearing before an administrative law judge in accordance with the administrative appeals requirements set forth in Section 18.342 of this chapter. If a hearing is requested, the compliance order does not become final until the administrative law judge has issued a recommended decision on the appeal to the director and the director has issued a final decision on the appeal.
 4. After a compliance order becomes final, the Office of General Counsel, at the request of the director, may file an action in the Community Court to enforce an administrative compliance order issued pursuant to this subsection. 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 Section 18.340.I. of this chapter.
 5. The director's final decision is appealable to the Community Court, but the decision is not automatically stayed during the appeal.
- G. Permit, Certification, or Registration Suspension or Revocation.
1. The director may suspend or revoke a permit, certification, or registration issued under this chapter for good cause, including, but not limited to, the following reasons:
 - a. Failure to notify the Department of significant changes to the permitted facility or permitted, certified, or registered activity;

- b. Misrepresentation, submittal of false or inaccurate information, or failure to fully disclose all relevant facts in a permit, certification, or registration application;
 - c. Failure to provide timely notice or other information to the Department as required under this chapter and/or any permit, certification, or registration issued under this chapter;
 - d. Refusing to allow the Department timely inspection of the facility/site premises and records;
 - e. Failure to meet compliance schedules;
 - f. Violation of any requirement set forth in this chapter or violation of any terms or conditions of a permit, certification, or registration issued under this chapter.
2. A decision to suspend or revoke a permit, certification, or registration shall be based on a finding that continued operation of the permitted facility or the permitted, certified, or registered activity presents a risk to public health and safety or a threat to the environment.
 3. Before suspending or revoking a permit, certification, or registration, the director shall provide notice to the permittee, certified person, or registered person by certified mail of the Director's intent to suspend or revoke the permit, certification, or registration. Such notice may include an administrative compliance order issued by the director, ordering that noncompliance with permit, certification, or registration requirements be corrected within a specified timeframe. If the permittee fails to correct the noncompliance within the timeframe specified by the administrative compliance order, the permit, certification, or registration shall be deemed suspended.
 4. The Department may immediately suspend a permit, certification, or registration and require the cessation of any activity for any suspected violation that would constitute a serious violation, and such suspension shall remain in effect for a minimum of 15 calendar days to allow the Department to investigate the suspected violation.

5. A notification by the director revoking a permit, certification, or registration is appealable to an administrative law judge and the final order of revocation from the director is appealable to the Community Court in accordance with the administrative appeals requirements set forth in Section 18.342 of this chapter.
- H. Civil Penalties.
1. A person who is found to be in violation of this chapter, a compliance order issued pursuant to Section 18.340.F., or any provision of a permit, certification or registration issued under this chapter, shall be subject to:
 - a. An order imposing an administrative civil penalty of up to \$5,000.00 per day for each violation; or
 - b. A civil judicial penalty of up to \$10,000.00 per day for each violation.
 2. 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 the plaintiff makes a prima facie 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 established that continuous compliance has been achieved.
 3. At the request of the Director, the General Counsel may file an action in the Community Court to recover penalties provided for in this section.
 4. In determining the amount of a civil penalty under this section, the Director or the Community Court, as appropriate, shall consider the following factors:
 - a. The violator's full compliance history and good faith efforts to comply;
 - b. Self-reporting of the violation;
 - c. The duration of the violation as established by any other credible evidence (including evidence other than the applicable test method);
 - d. The hazard or potential hazard created to the health or safety of the public;

- e. Payment by the violator of penalties previously assessed for the same violation;
- f. The economic damage to the property or the environment caused by the violation;
- g. The economic benefit of non-compliance to the violator;
- h. The seriousness of the violation;
- i. If applicable, the size of the business and the economic impact of the penalty on the business; and
- j. Any other matters that justice may require.

I. Injunctive Relief.

1. 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, a compliance order, or any provision of a permit, certification or registration issued under this chapter;
 - b. A person has violated or is in violation of a compliance order that is in effect; or
 - c. A person has created or is creating an imminent and substantial endangerment to public health or the environment.
2. Under this section, the Director may also seek other action as is appropriate for legal and/or equitable relief, including requiring the person to conduct environmental remediation or to establish performance bonds. Such relief may also include the confiscation, impoundment, or deactivation of vehicles and equipment used to commit acts which violate any provision of this chapter.
3. An action brought pursuant to Section 18.340.J.1 and 2 shall be commenced within two years of the occurrence of the violation. However, when an

investigation has been completed by the Department, the action shall be commenced within one year of the completed investigation.

18.341. Criminal Enforcement.

A. The Department may request that the Community Office of the Prosecutor bring a criminal action in Community Court against any person under the criminal jurisdiction of the Community and/or the Department may refer a criminal enforcement action or portion of such action to the U.S. EPA.

B. Any person under the criminal jurisdiction of the Community, who intentionally, knowingly or recklessly violates any provision, requirement or prohibition of this chapter or a permit, certification, or registration issued pursuant to this chapter shall, upon conviction, be punished by imprisonment for a period not to exceed 30 days, or a fine not to exceed \$5,000.00, or both. Criminal prosecution may be undertaken either as an alternative or in conjunction with any other remedy under this chapter.

C. The U.S. EPA maintains concurrent jurisdiction with the Community to enforce label violations and may assess penalties for label violations in addition to those assessed by the Community.

D. This section shall not be deemed to limit or restrict the Department or any other persons from taking other appropriate action, including notifying representatives of federal, state, county or municipal government agencies if it appears any person violated or failed to comply with this chapter.

18.342. Administrative Appeals Procedures.

A. Appeal of a Department Action. This section applies to all appealable Department actions under this chapter. An appealable Department action is:

1. The issuance or denial of a permit, certification, or registration authorized by this chapter;
2. Revocation or suspension of a permit, certification, or registration authorized by this chapter;
3. The issuance of a compliance order; and
4. The imposition, by order, of an administrative civil penalty.

B. Notice of Appealable Department 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 18.342.C. The

notice shall identify the Pesticide Code, rule, permit, certification, or registration provision 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 Department action by filing a notice of appeal with the Department within 30 days after receiving the notice prescribed in Section 18.342.B.1. The notice may be filed by a party whose legal rights, duties, and privileges were determined by the appealable Department 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, license, certification, or registration and who exercised any right to comment on the action as provided by law or rule, 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 Executive Office of the appeal and the Executive Office shall schedule a hearing pursuant to Section 18.342.E.

C. Process Service.

1. Every notice or decision under this section shall be served by personal delivery 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 served to the party's last address of record with the Department. Upon written agreement of the parties, electronic service may be utilized.
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.

D. Request for Hearing.

1. The Director shall notify the Executive Office of the appeal within five business days.
2. The Department shall provide the following information to the Executive Office:
 - a. Caption of the matter, including the names of the parties;
 - b. The date the party appealed the Department action;
 - c. Estimated time for the hearing;
 - d. Proposed hearing dates;

- e. Any request to expedite or consolidate the matter;
- f. Any agreement of the parties to waive the applicable time limits to set the hearing; and
- g. Information regarding the nature of the proceeding, including the specific allegation.

E. Assignment of Administrative Law Judge: Setting the Hearing. Within 30 days of the Executive Office's receipt of a request for a hearing, the Executive Office shall provide, 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.

F. Scheduling of Hearing.

- 1. Except as provided in Section 18.342.F.2., below, hearings for appealable Department actions shall be held within 60 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 on 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 the chapter involved; and
 - d. A short and plain statement of the matters asserted.
- 4. Notwithstanding Section 18.342.F.3, a hearing shall be expedited upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal have actual notice of the hearing date. Any party to the appeal may file a motion with the administrative law judge asserting the party's right to an expedited hearing.

G. 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 pleadings;
 - c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
 - d. Obtain stipulations or rulings regarding testimony, exhibits, facts, or law;
 - e. Schedule deadlines, hearing dates, and locations if not previously set; and
 - f. Allow the parties the opportunity to discuss settlement.
2. 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 action taken.

H. Hearing.

1. The parties to an appealable Department action 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 relevant provisions of GRIC Code Title 4, Courts and Procedures, 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 the adherence to the 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.
- I. Final Administrative Decision: Review.
1. The administrative law judge shall issue a written recommended decision within 20 days after the hearing is concluded. However, for complicated cases or for other good cause, the administrative law judge may provide notice to the parties that the recommended decision will be issued more than 20 days after the conclusion of the hearing. 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 and a copy of the record of the hearing on the appealing party 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 Department shall serve the administrative law judge's decision on all parties.
 - b. Prior to rejecting or modifying the decision, the Director shall consult with and obtain the consent of the Executive Office 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.
 4. The Director's final decision shall state separately the findings of fact and conclusions of law. If no appeal is taken within 35 days, the decision shall become final.

5. A party may appeal a final administrative decision pursuant to Section 18.343.

18.343. 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 under this chapter.
2. Unless review is sought of an administrative decision within the time and in the manner provided in Section 18.343.B., 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 35 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 last recorded residence or place of business of the affected party.

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

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

E. Appearance of defendants. The Department shall answer the complaint within 20 days after service of the summons and 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, and shall clearly specify the grounds upon which review is sought. It shall also state what portion of the record the party asserts is relevant to the review it is seeking and that shall be filed by the Department 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 of the Department 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 the record 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, except in the event of a trial de novo or in cases where, in the discretion of the court, justice demands the admission of such evidence.
2. The trial shall be de novo if a trial de novo is demanded in the complaint or answer and if no hearing was held by an administrative law judge or the proceedings before the administrative law judge were not stenographically reported or mechanically recorded so that a transcript might be made.
3. A party who has demanded a trial de novo in the complaint or answer pursuant to Section 18.343.G.2., shall file, prior to the time for filing the opening appellate brief, a motion explaining the need for a trial de novo with citation to legal authority supporting the demand. Any party opposing the motion may file a response thereto.
4. The Community Court may not reverse the Director's finding of fact unless it is clearly erroneous and may not reverse the Director's final administrative decision unless it has no substantial evidentiary basis in the record or is erroneous as a matter of law.

H. Authority of the Gila River Indian Community Court.

1. The Community Court may:
 - a. With or without bond, unless required by this chapter, 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.
 - b. Make any order that it deems proper for the amendment, completion, or filing of the record of the proceedings by the Department.
 - c. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
 - d. Dismiss parties or realign parties as plaintiff and defendant.

- e. Modify, affirm, or reverse the decision in whole or in part.
 - 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.
 - h. In the case of affirmance or partial affirmance of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, upon which execution may issue.
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 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 Department may be appealed to the Gila River Indian Community Court of Appeals.

J. Rules of Civil Procedure. Where applicable, all rules of civil procedure in the Community Court, including rules relating to appeals to the Community Court of Appeals, shall apply to all proceedings.

18.344. Effective Date.

This chapter shall become effective the date of its enactment by the Community Council. Any person engaging in the pest management activities within the Reservation shall comply with this chapter on the effective date unless otherwise exempted from compliance under the provisions hereof.

18.345. Transition Period.

If any person was engaged in pest management activities prior to the effective date of this chapter that requires the person to make an application for a permit, certification and registration, such person shall come into compliance with this chapter by submitting all documentation and applying for all permits, certifications, or registrations required hereunder within 90 calendar days of the effective date. The Office shall waive the pesticide use permit fees for those pest management businesses and regulated growers that already paid their fees for that calendar year. If the effective date of this chapter is on or after October 1, the Office shall waive all new permit,

certification, or registration fees for the remainder of the calendar year. Those persons that submitted their applications for permits, certifications, and registrations for which the fees were waived shall submit the renewal fee for the following calendar years as long as there is no lapse in their renewals.