



FY22 Proposed Pesticide Ordinance White Paper



FY2022

Department of Environmental Quality
Pesticide Control Office



Mission Statement:

The Department of Environmental Quality honors the Community's cultural heritage by protecting, conserving, and restoring the Community's environmental resources.

Vision Statement:

A healthy, sustainable environment for our future generations.

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BACKGROUND

The Gila River Indian Community's (Community) adopted Pesticide Ordinance GR-05-14, codified at Title 18, Chapter 3, Pesticide Code, on July 2nd, 2014 (Code). The Code further formalized and established uniform requirements and procedures for the safe handling, storage, sale, production, transportation, and application of pesticides within the Community, 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 are liberally construed to facilitate the accomplishment of these purposes.

The Pesticide Control Office (Office) operates, in part, under an Environmental Protection Agency (EPA) Federal Insecticide, Fungicide, Rodenticide, Act (FIFRA) Cooperative Agreement while Title 18, Chapter 3, §18.308(B2) has identified the Office as responsible for administering the Code and granted authorization to propose amendments as necessary.

NEED

Since the last Gila River Pesticide Code was adopted, two significant federal rule changes have been enacted: 40 CFR 170, Worker Protection Standard, docket number: EPA-HQ-OPP-2011-0184 and 40 CFR 171, the Certification of Pesticide Applicators rule, docket number: EPA-HQ-OPP-2011-0183.

As such, the Community's Code must not conflict with and remain consistent with Federal law regarding pesticide use for the protection of the health, safety and welfare of the Community.

In addition, regular amendments to the Code are required to ensure that its provisions are clear, concise, applicable, and defensible in a court of law while the opportunity exists to seek regulatory solutions to address the changing demands of the Community as to how pesticides are regulated.

SUMMARY OVERVIEW

The implementation of GR-05-14 has at times proved challenging. This was in part due to how the legislation was structured and a lack of clear applicability criteria often with confusing rules. This proposed revision has borrowed from the format of the Department of Environmental Quality's most recently adopted environmental codes, GR-04-16; Wastewater and Reclaimed Water Management Ordinance, codified at Title 15, Chapter 6 and GR-001-19; Apiary Registration Code, codified at Title 18, Chapter 8.

Due to the need to restructure GR-05-14, a complete rewrite was necessary. Notable revisions, omissions and additions are summarized below.

§18.301. General Provisions

The authority to regulate pesticides has been elevated to the Department level as opposed to a program contained within the Department. This change had been neglected since the original 1981 Pesticide Code which predated the 1995 establishment of the Department of Environmental Quality. Therefore, it is important that the code refers to the established department, whose director can then delegate the

implementation to its assigned program. This ensures consistency with other environmental ordinances and is in line with the Department’s hierarchy structure.

Clarifies the expectation of compliance with the rules outlined within the Code while establishes a standard for the analysis of laboratory samples collected during the course of an investigation.

Borrows from language utilized under GR-001-19, Apiary Registration Ordinance, to ensure activities regulated under this Chapter are as transparent as possible.

Lastly, expanded applicability to cover the application of fertilizers aerially.

§18.302. Definitions

Definitions in general were revised to add specificity and remove redundancy for rules which depend on a definition to determine applicability of the rule itself. Of note is the focus on the definition of the word “Person” which consolidates previous definitions and allows for greater flexibility with rule writing while being less reliant on other definitions. Also of note is the definition of the term “Drift” which required clear defining as it is the cornerstone in determining exposure to humans and the environment resulting from the application of pesticides. The definition of “Drift” was entirely absent from GR-05-14.

Also of note is the addition of the term Fertilizer Material. This definition was sourced from the ARS Title 3 – Agriculture, Ch. 2 Regulatory Provisions, Article 3 Fertilizer Materials, 3-262 Definitions; and was necessary to add to support fertilizer materials applied by air provisions.

§18.303. Authorization Administration

This section consolidates various administrative provisions which were found throughout GR-05-14. Newly introduced is the mechanism to address those authorizations which are applied for at the end of an authorization cycle.

§18.304. Authorization Requirements

Revised to establish clear requirements for each type of authorization the Department wishes to regulate under this Code. The rules place the responsibility of providing the necessary supporting documents directly on the applicant, updates various endorsements of authorizations to align with federal standards and introduces the requirement of providing a valid Community Business License where applicable. Removed were the dependencies on purely administrative and redundant State of Arizona equivalent authorizations.

The exceptions to the authorization requirements were further stress tested to ensure that no loopholes or unintentional applicability remained as in the current GR-05-14 Code. For example: A person who conducts a non-ag general use application to their own land is exempt from a pesticide use permit, but is required to obtain a Community Applicator (CA) credential. This is an issue as a CA credential is only applicable to Community members or GRIC employees.

§18.305. Pesticide Sales Requirements

Reorganized to clarify requirements.

§18.306. Pesticide Use Requirements

This section consolidated all use requirements from GR-05-14 while eliminating the need for separate “Service Vehicle” requirements. Requirements are divided based upon whether the pesticide toxicity in use is “General” or “Restricted”. This differs from GR-05-14 which focused on the how and where the pesticide was used. To streamline this further, decontamination requirements were aligned with 40 CFR 170, Worker Protection Standard, where formerly there were two separate standards for the applicator even though the pesticide product may have been the same.

Restricted Use Pesticides remain aligned with Federal requirements.

Expanded to establish standard for the application of fertilizer materials by air and require 8-hour notice for any application of pesticide or fertilizer by air.

§18.307. Aerial Pesticide and Fertilizer Material Applications

This section was separated as significant work was completed to ensure applicability and specificity while fertilizer material applied by air was added to ensure all use applications conducted by air were covered.

The 8-hour pre-notification was reworked to provide a means for the applicator to directly notify the public in a timelier manner.

A general setback distance for both pesticide and fertilizer material aerial applications was set to ¼ mile, as this was determined to be greater than current standards and in line with requested public interests.

§18.308. Pesticide Storage Requirements

Storage requirements were consolidated and focuses on security, contamination prevention, and decontamination. Decontamination equipment requirements were streamlined to align with 40 CFR 170, Worker Protection Standard, to ensure consistency with Use Requirements regardless of where stored.

§18.309. Recordkeeping Requirements

Significant revisions were made to the recordkeeping requirements. General Use requirements were further divided by the type of use while revisions to Restricted Use application recordkeeping requirements were required to ensure consistency with Federal Requirements under 40 CFR 171, Certification and Training.

§18.310. Pesticide Application Record Reporting Requirements

Revised to switch focus to a post-application record. This change was to ensure that the Community has a more accurate and complete picture of what types of pesticide products are being applied within the

Community. The value of pre-notification requirements of a pesticide application to the Department has significantly diminished due to enhanced operational changes. The option for individual Community residents to work with the applicator to obtain pre-notifications as arranged between the parties, remains and is addressed under the newly drafted provisions in §18.307 for aerial applications.

§18.311. Fees, Fines, and Program Income Account

Fees were revised to align with authorizations while the cost for Restricted Use Producers and Dealers were increased to align with surrounding jurisdictions. A nominal increase to the Restricted Use Pesticide certification is reflected to account for increased operating costs.

Type of Pesticide Use Permit	New Application Fee	Renewal Application Fee
Agricultural Use	\$150	\$100
Non-Agricultural Use	\$150	\$100
Type of Registration	New Application Fee	Renewal Application Fee
Producer	\$ 200	\$ 150
Dealer: Restricted Use Pesticide	\$ 200	\$ 150
Type of Certification	New Application Fee	Renewal Application Fee
Community Certified Applicator	\$ 25	\$ 15

Specificity as to how fines are calculated is contained within the Enforcement Response Policy and Administrative Civil Penalty Calculation Matrix.

§18.312. Inspections

Added to further establish the power and duties of the Department as well as to align with the Department of Environmental Quality’s most recently adopted environmental code, GR-04-16; Wastewater and Reclaimed Water Management Ordinance, codified at Title 15, Chapter 6.

§18.313. Civil Enforcement

Clarified enforcement measures available to the Department while referencing operational procedures and policies contained within an approved Enforcement Response Policy.

§18.314. Criminal Enforcement

No significant revisions made.

§18.315. Administrative Appeals Procedures

No significant revisions made.

§18.316. Judicial Review of Final Administrative Decisions

No significant revisions made.

§18.317. Waivers and Variances

Added as a mechanism to provide flexibility in the event strict adherence to Tribal requirements are not possible. Modeled from GR-04-16; Wastewater and Reclaimed Water Management Ordinance, codified at Title 15, Chapter 6.

§18.318. Signatures and Certifications

Strengthened language necessary to ensure the collection of accurate and legal documentation.