

TITLE 18

ENVIRONMENT

Chapter 3. Pesticides

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CHAPTER 3. PESTICIDES

18.301. General Provisions.

A. **Purpose.** The purpose of this chapter is to provide minimum performance standards for the proper use, handling, storage, sale, production, and transportation of pesticides. This chapter is also designed to prevent and minimize environmental degradation and contamination of natural resources; and protect the health, safety, and welfare of the members, nonmembers, residents, and employees of the Gila River Indian Community. This chapter is intended to achieve these purposes through establishing authorizations, standards, and requirements.

B. **Authority.**

1. The Community enacts this chapter under its inherent civil legislative, adjudicative, and regulatory authority and pursuant to the express delegation of authority by Congress under the Indian Reorganization Act of 1934, Act of June 18, 1934, c. 576, 48 Stat. 984 (1934) (codified as amended at 25 U.S.C. § 5101 *et seq.* (2018)) which provides the Community authority to organize, adopt the Constitution and Bylaws of the Gila River Indian Community (March 17, 1960), and to enact laws

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and ordinances governing conduct within the exterior boundaries of the Reservation, 25 U.S.C. § 5123.

2. 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 exterior boundaries of the Reservation pursuant to a commercial transaction, lease agreement, contract, permit, or other arrangement or activity have voluntarily and explicitly agreed to the jurisdiction of the Community and are subject to regulation under the laws, ordinances, and regulations of the Community. The Community finds that the activities regulated under this chapter, if left unregulated, pose an imminent threat to the political integrity, economic security, health, welfare, and environment of the Community.
3. 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).
4. The authority to regulate pesticide activities within the Reservation inherently lies within the retained sovereign power of the Community.

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### **C. Scope.**

1. Violations of this chapter may demonstrably and seriously impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Community and, therefore, this chapter shall apply to:
  - a. All persons within the exterior boundaries of the Reservation, regardless of Indian status; and
  - b. All places and lands located anywhere within the exterior boundaries of the Reservation, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or real property interest of any kind held by any person as defined under this chapter.
2. Any person who is anywhere within the exterior boundaries of the Reservation, whether on trust or non-trust lands, must comply with, and is subject to this chapter, any guidance documents issued hereunder, all Community laws, and all orders of the Department of Environmental Quality (Department) and the Community Court. All such persons shall be deemed to have consented to the civil jurisdiction of the Community Court and shall be subject to civil prosecution, penalties, damages, or any other civil remedies imposed or awarded by the Community Court for any violations of this chapter.

### **D. Applicability.**

1. This chapter shall apply to all persons who conduct regulated pesticide activities, or apply fertilizer materials aerially, within the exterior boundaries of the Reservation. Persons not considered an Agricultural Establishment who use or store a general use pesticide on property on which they reside are not regulated under this chapter.
2. Compliance with this chapter shall not exempt a person from complying with other applicable laws, statutes, agreements, regulations, or ordinances of, or enforced by, the Community, the federal government, or any other applicable jurisdictions.

### **E. Powers and Duties of the Department.**

1. The Department, as authorized by the Community Council of the Gila River Indian Community, shall administer and enforce this chapter.

### **F. Adoption by Reference.**

1. The Federal Insecticide, Fungicide, and Rodenticide Act, as defined in this chapter and including any subsequent amendments that may be in effect at the time of the regulated activity pursuant to this chapter, is hereby adopted by reference and incorporated as part of this chapter.

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### **G. General Ordinance Provisions.**

1. No person shall engage in any action that violates or causes the violation of this chapter.
2. This chapter applies to a variety of conditions and circumstances. Strict compliance with all laws prescribed herein might not fit every conceivable situation. When strict compliance with non-federal tribal requirements of this chapter is impractical, or extraordinary and unusual conditions exist, an applicant may request a waiver or variance pursuant to Section 18.317.
3. Analyses of samples performed under this chapter, excluding field analyses, shall be conducted by an approved laboratory as determined by an EPA-approved Quality Assurance Project Plan.

### **H. Uses of Reported Information.**

1. The Department will use all reported information to determine compliance with the law set forth in this chapter and may be used by the Department as evidence in any enforcement case arising under this chapter.
2. Except for data determined to be confidential business information under Section 18.301.H.3, any records, reports, or information obtained from any person, including all information submitted, reported, or noticed to the Department under this chapter, shall be available to the public at the Department's offices. Pursuant to the Community Council Secretary's Office (CCSO) Public Records Request Policy as amended, all requests for information regarding the Department shall be subject to applicable Community public information/records policies.
3. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the department, shall be available to the public, except that the information, or a particular part of the information, shall be considered confidential on either:
  - a. A showing, satisfactory to the Department, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person; or
  - b. A determination by the Department that disclosure of the information, or a particular part of the information, would be detrimental to an ongoing investigation by the Department.
4. Notwithstanding Section 18.301.H.3, the following information shall be available to the public:

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- a. The name, primary business telephone number, and city of any permit applicant or permittee; and
  - b. Information contained in or derivable from the pesticide label or the relevant safety data sheet.
5. Notwithstanding Section 18.301.H.3, the Department may disclose any records, reports or information obtained from any person under this chapter, including records, reports or information obtained by the Department, to:
- a. Other tribal departments concerned with administering this chapter or if relevant to any administrative or judicial proceeding under this chapter; or
  - b. Employees of the EPA if such information is necessary or required to administer and implement or comply with applicable federal law.

### I. **Sovereign Immunity.**

1. Nothing in this chapter, nor any action or agreement of the Department, shall be construed as, or is intended to be, a waiver or modification of the sovereign immunity enjoyed by the Community, or consent by the Community to jurisdiction or suit against it.
2. The Community, the Community Council and its members, the Department and its members, and all other Community officers, employees or representatives thereof, who are performing their duties by implementing or enforcing this chapter, are immune from suit for monetary damages in any court of law and do not waive any of their sovereign rights or immunities, executive privileges or right to privacy or confidentiality.

J. **Reservation of Rights.** The authority, power, and remedies provided in this chapter are in addition to, and not a limitation of, any authority, power or remedies provided in any other ordinances, tribal sovereign authority, federal law or as provided under common law.

K. **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.

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

### **18.302. Definitions.**

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A. As used in this chapter, or when used for purposes of application of this chapter, the terms set forth below shall have the following meanings.

1. ***Administrative Civil Penalty Matrix*** means a matrix developed by the Department for use in conjunction with the Enforcement Response Policy to determine the appropriate monetary amounts of civil penalties imposed by the Department.
2. ***Administrative Compliance Order*** means a unilateral order issued by the Department without agreement with the responsible party. An administrative compliance order may include, but not be limited to; orders to comply with this chapter within a specified time limit, to cease and desist specified activities, to take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, or to halt operations.
3. ***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.
4. ***Administrative Record*** means documents that are maintained by the Department pertaining to a particular person or activity regulated under this chapter and that are available for public inspection. The administrative record contains information reported to or generated by the Department including, but not limited to, authorization applications, authorizations, notifications, application records, completed inspection reports, and closed enforcement actions.
5. ***Agricultural Establishment*** means any farm, forest, nursery, or greenhouse where pesticides are used in the production of any plant, animal, plant product, or animal product produced for commercial or research purposes.
6. ***Agricultural Use*** means the use of a pesticide in the production of any plant, animal, plant product, or animal product produced for commercial or research purposes.
7. ***Applicator*** means an individual who uses or supervises the use of a pesticide within the Reservation.
8. ***Authorization*** means any of the methods and mechanisms the Department uses to allow a person to conduct a regulated pesticide activity. Examples of Departmental authorizations include, but are not limited to: permits, registrations, certifications, and approval letters.
9. ***Certified Applicator*** means a person who is authorized by a federal, state, or tribal government's United States Environmental Protection Agency- approved Certification and Training plan to certify applicators to use restricted use pesticides.

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10. **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.
11. **Community** means the Gila River Indian Community.
12. **Community Applicator** means an applicator who is an employee of the Community; a Community owned entity, business or enterprise; or a Community member who has been authorized by the Department to use or supervise the use of a general use pesticide pursuant to the Community Applicator certification requirements outlined in this chapter.
13. **Community Certified Applicator** means an applicator authorized by the Department to use or supervise the use of a restricted use pesticide pursuant to a valid authorization recognized by the EPA under 40 C.F.R. Part 171.
14. **Community Council** means the governing body of the Gila River Indian Community as established in the Constitution and Bylaws of the Gila River Indian Community, approved March 17, 1960.
15. **Community Court** means the trial court of the Gila River Indian Community.
16. **Community Department** means a department or governmental subdivision of the Gila River Indian Community. Community department does not include a Community-owned entity, business or enterprise.
17. **Dealer** means any person selling or offering for sale a restricted use pesticide.
18. **Department** means the Director or designee of the Gila River Indian Community's Department of Environmental Quality, or any successor department.
19. **Direct Supervision** means that a pesticide is used by a non-authorized applicator acting under the instruction and control of an appropriately authorized applicator who is available if and when needed, even though such authorized applicator is not physically present at the time and place the pesticide is used.
20. **Drift** means the physical movement of pesticide, or associated degradation compounds, through the air at the time of a pesticide application from the application site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide, or associated degradation compounds, to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

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21. ***Enforcement Response Policy*** means a policy developed by the Department to use in determining the appropriate enforcement response for violations of this chapter to ensure fair and equitable treatment of Persons regulated under this chapter.
22. ***Entity*** means an enterprise, authority or corporation organized by the Community Council and wholly owned by the Gila River Indian Community.
23. ***EPA*** means the United States Environmental Protection Agency.
24. ***Executive Office*** means the Governor or Lieutenant Governor of the Community or their designee.
25. ***Fertilizer Material*** means any substance or mixture of substances intended to be used for promoting or stimulating the growth of plants, increasing the productiveness of plants, improving the quality of crops or producing any chemical or physical change in the soil.
26. ***FIFRA*** means the Federal Insecticide, Fungicide, and Rodenticide Act of 1996, 7 U.S.C. §§ 136 – 136y, as amended. For purposes of this chapter, the term “FIFRA” also includes the regulations adopted and codified in 40 C.F.R. Chapter I, Subchapter E, Parts 150 through 189.
27. ***Final Administrative Decision*** means a decision by the Department that is subject to review by the Community Court pursuant to the provisions of this chapter.
28. ***General Counsel*** means the Gila River Indian Community’s General Counsel, or his or her designee.
29. ***General Use Pesticide*** means any pesticide classified as a general use pesticide in the FIFRA, 7 U.S.C. § 136a(d).
30. ***Label*** means the written, printed or graphic matter on, or attached to, the pesticide, device, or any of its containers or wrappers, including its labeling.
31. ***Labeling*** means all labels and other written, printed or graphic 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.
32. ***Neutral Inspection Scheme*** means a plan developed by the Department to ensure compliance monitoring is established on a set of criteria rather than established on information that a violation has occurred or is occurring.



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33. ***Non-Agricultural Use*** means the use of a pesticide not in the production of any plant, animal, plant product, or animal product produced for commercial or research purposes.
34. ***Noncompliance*** means any act or situation that is in contravention of the requirements set forth under this chapter or does not meet the terms and conditions of an authorization.
35. ***Notice of Violation*** means an informal compliance tool issued by the Department to put a responsible party on notice that a significant violation of a provision of this chapter, or an authorization issued under this chapter, has or appears to have occurred.
36. ***Opportunity to Correct*** means an informal written document that notifies the violator that an alleged violation of the GRIC Code has occurred.
37. ***Permit*** means a written document that grants authorization to conduct a regulated pesticide activity. A permit is between the Department and a person, whereby the person voluntarily consents to the conditions in the permit and the jurisdiction of the Community in exchange for permission to conduct a regulated pesticide activity on the Reservation.
38. ***Permittee*** means the person to whom a permit is issued by the Department. The permittee is legally responsible for meeting the terms and conditions of a permit. The term “permittee” shall be functionally synonymous with the term “owner”, “operator” or “responsible party”.
39. ***Person*** means any individual, including Community members, non-member Indians, and non-Indians; public or private corporation, company, business, partnership, legal entity or private enterprise; trust, firm, political subdivision, cooperative, association or society of persons; industry, managing body, consortium, institution, irrigation district, municipality, commission, inter-tribal body, interstate body, Indian Tribe; local, state or federal governmental agency or other governmental subdivision; and the Community and any of its divisions, departments, programs, sections, entities and companies, unless expressly provided otherwise.
40. ***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, except virus, bacteria or other microorganisms on or in living humans or other living animals, which the Department declares to be a pest for the purpose of enforcement of this chapter.
41. ***Pest Control Advisor*** means an individual licensed by the Arizona Department of Agriculture as a “pest control advisor” or “agricultural pest control advisor.”

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42. ***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.
43. ***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.
44. ***Protective Eyewear*** as required by a registered pesticide label, and that is otherwise not defined, shall mean shielded safety glasses equipped with brow and side shields, goggles, or face shield. Safety glasses, prescription glasses, or sunglasses which are not equipped with brow and side shields are not considered protective eyewear.
45. ***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.
46. ***Regulated Pesticide Activity*** means any activity involving a pesticide when that activity is regulated under this chapter.
47. ***Restricted Use Pesticide*** means any pesticide classified as a restricted use pesticide in the FIFRA, 7 U.S.C. § 136a(d), and identified as such or required to be identified as such by the product label.
48. ***Service Container*** means a container that is filled with an EPA-registered pesticide by a person for use within 72 hours.
49. ***Stored***, as in “to store a pesticide,” means a pesticide placed or left in a location for preservation, disposal or later use in excess of 72 hours not to include pesticides displayed for sale.
50. ***Use***, as in “to use a pesticide,” means any of the following:
  - a. Pre-application activities involving mixing and loading the pesticide;

- b. Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a non-authorized applicator; or
  - c. Other pesticide-related activities, including, but not limited to; staging of pesticides for application whether in a vehicle or otherwise for a period of less than 72 hours, cleaning pesticide contaminated equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.
51. **Variance** means a Department-authorized deviation from specific tribal provisions of this chapter not to include federal regulations. A variance may be temporary or indefinite.
52. **Waiver** means an exemption from specific tribal provisions of this chapter not to include federal regulations. A waiver may be temporary or indefinite.
53. **Wood Destroying Organism** means organisms that attack, damage or destroy wood or wood-derivative products, but does not include birds or mammals.

**18.303. Authorization Administration.**

**A. Issuance, Duration and Renewals.**

- 1. All authorizations shall only be issued once all application requirements are met and become effective on the day of issuance or as otherwise notated.
- 2. Permits shall expire on December 31<sup>st</sup> of the calendar year issued and not exceed one calendar year.
- 3. Community Certified Applicator certifications and Producing Establishment registrations shall expire on the expiration date of the supporting credential.
- 4. Community Applicator certifications shall remain subject to suspension or revocation without expiration.
- 5. Applications for renewal may be processed no greater than 90 days prior to the expiration of the currently valid permit, certification or registration.

**B. Revising and Reissuing an Authorization.**

- 1. An applicant, under his/her own initiative, may submit a written request to the Department for a revision or reissuance of his/her authorization.
- 2. Reasons to revise an authorization may include, but are not limited to:
  - a. Making minor changes (e.g., change contacts, fix errors, etc.); or

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- b. A showing that recent information received by the Department was not available or provided to the Department at the time of authorization issuance and would have justified different authorizations at the time of issuance.

C. **Transfers of Ownership Prohibited.** The transfer of ownership of any authorization is prohibited.

D. **Exceptions.** New permit applications with less than 90 calendar days between the day of issuance and day of expiration shall have the expiration extended through December 31<sup>st</sup> of the following calendar year.

### 18.304. Authorization Requirements.

A. **Applicability.** Notwithstanding Section 18.301.D.1., all persons shall obtain the appropriate authorization prior to engaging or offering to engage in a regulated pesticide activity.

B. **General Provisions.** Applicants applying for an authorization shall submit:

1. A completed application, on a form provided by the Department, identifying the:
  - a. Type of authorization being applied for;
  - b. Applicant's contact information and information pertaining to the applicant's business and/or qualifications; and
  - c. Designation of the applicant's principal office location, each branch office doing business within the Reservation and the address where the records required to be maintained under Section 18.310 will be kept.
2. A copy of the applicant's valid Gila River Indian Community Business License issued by the Office of the Treasurer, as applicable.
3. Payment of any fees identified as associated with the applied for authorization described in Section 18.311.
4. A copy of the applicant's valid Gila River Indian Community member identification if claiming fee exemption.
5. Affirmation that the applicant voluntarily consents to:
  - a. 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 Department to conduct investigations of violations of this chapter; and

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- b. Submits to the jurisdiction of the administrative law judge or the Community Court for the express purpose of enforcement of this chapter.
6. Acknowledgement that the applicant:
  - a. Is in 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 authorization process; and
  - b. Understands 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 subject to 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 removal or exclusion under Title 8, Chapter 1, of the GRIC Code.
7. A signed and dated certification that the information contained in the application is true and accurate.

### **C. Pesticide Use Permit.**

1. Persons who use or contract the use of a pesticide shall possess a valid Pesticide Use Permit prior to conducting the use of the pesticide in either of the following categories:
  - a. Agricultural Use; or
  - b. Non-Agricultural Use.
2. Applicants shall submit proof of financial responsibility to cover claims of injury, illness, death, or property damage or other liability 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, \$1,000,000 for personal death, injury or illness, and \$1,000,000 for public liability.
3. Agricultural Establishment applicants shall also submit 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.

### **D. Producer & Restricted Use Dealer Registration.**

1. Persons who produce a pesticide or sell a restricted use pesticide shall possess a valid registration prior to conducting the production or sale thereof.

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2. Producer applicants shall also submit a:
  - a. Valid establishment number issued to the producing establishment by the EPA; and
  - b. Listing of pesticides being produced, each pesticide's EPA registration number, and a complete copy of each pesticide's label.

E. **Community Applicator Certification.** Applicants shall also submit a photocopy of their valid:

1. Community member identification; or
2. Community employee, enterprise or other identification to verify applicability as determined by the Department.

F. **Community Certified Applicator Certification.**

1. Applicants shall also submit a photocopy of the valid supporting certification issued by a tribal, state or federal agency that has been authorized by the EPA pursuant to 40 C.F.R. Part 171 for the restricted use categories requested.
2. Applicants shall identify the restricted use categories they seek certification in from among the following:
  - a. Agricultural pest control.
    1. Crop Pest Control. 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.
    2. Livestock Pest Control. 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.
  - b. Forest pest control. This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries,

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and forest seed producing areas.

- c. 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.
- d. Seed treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.
- e. 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 18.304.F.2.h.
- f. 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.
- g. Industrial and institutional 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.
- h. 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.
- i. 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.
- j. Demonstration and research pest control. This category includes:
  - 1. Individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration; and
  - 2. 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

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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.

- k. Sodium cyanide predator control. This pest control category applies to commercial applicators who use or supervise the use of sodium cyanide in a mechanical ejection device to control regulated predators.
- l. Sodium fluoroacetate predator control. This pest control category applies to commercial applicators who use or supervise the use of sodium fluoroacetate in a protective collar to control regulated predators.
- m. Soil fumigation. This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil.
- n. Non-soil fumigation. This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil.
- o. Aerial pest control. This category applies to commercial applicators who use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft.

### **G. Exemptions.**

- 1. The following shall be exempt from all authorization requirements:
  - a. Persons performing landscaping activities when:
    - 1. No more than one piece of pesticide application equipment is in use at the application site;
    - 2. The application equipment's collective capacity does not exceed four gallons of mixed herbicide;
    - 3. The person's primary service provided is not weed control; and
    - 4. Herbicides that are sterilants, pre-emergents, or labeled with the words "restricted use" are not utilized.
  - b. Persons applying general use pesticides limited in scope to less than 0.25 acres of treated area for the educational purpose of training applicators.



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- c. Persons who solely use non-restricted antimicrobial pesticides for routine custodial purposes, not to include specialized persons who provide large scale disinfection, remediation, or sanitation.
  - d. Persons not defined as a Community Applicator who conduct non-agricultural general use applications on property owned or controlled by the person.
2. Community departments and entities are exempt from providing proof of financial responsibility.
  3. Agricultural Establishments who conduct either agricultural or non-agricultural use applications on property owned or controlled by the Agricultural Establishment are exempt from providing proof of financial responsibility.

### **18.305. Pesticide Sales Requirements.**

#### **A. Applicability.**

1. This section is applicable to all persons who sell or offer to sell pesticides.

#### **B. General Provisions.**

1. Any person who sells pesticides shall sell only pesticides that have an EPA registration number.
2. Persons selling a pesticide shall:
  - a. Possess a valid Restricted Use Pesticide Dealer registration prior to selling or offering to sell restricted use pesticides;
  - b. Only sell restricted use pesticides for use within the Reservation to a person authorized by the Department as verified by the persons' possession of a valid Community Certified Applicator credential; and
  - c. Store pesticides in accordance with Section 18.308, Pesticide Storage Requirements.

### **18.306. Pesticide Use Requirements.**

#### **A. Applicability.**

1. Notwithstanding Section 18.301. D.1, this section applies to all persons who use an EPA-registered pesticide.

#### **B. General Provisions.**

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1. Unless exempted from registration by the EPA, a person shall only use those pesticides registered by the EPA.
2. All applied products meeting the EPA definition of a pesticide requiring a pesticide label, must have said label affixed on the outside of the pesticide container. The label must be intact and legible to properly identify the contents of the container.
3. All persons shall have ready access to a label and a safety data sheet for each pesticide in use at all times.
4. Pesticides approved under the FIFRA, 7 U.S.C. §§ 136c, 136p, 136v shall only be used in the Community if a person submits to the Department a use plan and receives from the Department an authorization approving the use of such pesticides by authorized persons in a manner identified in the plan.
5. At the location of use, persons using pesticides shall have ready access to the following:
  - a. Decontamination equipment: soap, not to include hand sanitizer; a minimum of one (1) gallon of water, and single use towels;
  - b. A change of clothing;
  - c. An emergency eyewash station capable of delivering gently running water at a rate of at least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes when applied pesticides require protective eyewear for use;
  - d. The name, address, and telephone number of the nearest emergency medical care facility or equivalent; and
  - e. A spill response action plan which identifies how the person would respond in the event of a spill to prevent, control or limit contamination of soil, water or other natural resources and the tools necessary to implement the plan.
6. Any person who uses any pesticide shall not allow the pesticide to drift onto a non-target area or to come in contact with any person either directly or by drift.
7. The application of any pesticide shall not become a nuisance, as defined under the Nuisance Ordinance, GRIC Code § 8.1203, Acts Constituting Nuisance, and subject to the provisions and scope of the GRIC Code, Title 8, Chapter 12, Nuisances.

**C. General Use Pesticide Applications.**

1. Unless otherwise exempt under Section 18.304.G, Authorization Requirements, any person who uses a general use pesticide shall possess a valid Community Applicator authorization, a valid Certified Applicator authorization, or the equivalent training required under 40 C.F.R. 170, Worker Protection Standard, prior to the use of a general use pesticide.

**D. Restricted Use Pesticide Applications.**

1. Any person who uses a restricted use pesticide shall possess a valid Community Certified Applicator authorization prior to the use of a restricted use pesticide.

**18.307. Aerial Pesticide and Fertilizer Material Applications.**

**A. Applicability.**

1. Notwithstanding Section 18.301. D.1, this section applies to all persons who apply an EPA-registered pesticide or fertilizer material aerially.

**B. General Provisions.**

1. Persons applying pesticides or fertilizer material by air shall possess a valid Agricultural Aircraft Pilot License issued by the State of Arizona Department of Agriculture.
2. Persons applying pesticides or fertilizer material by air, shall provide notice at least eight (8) hours prior to the planned application to a system identified by the Department. Content of the notice shall include at a minimum:
  - a. Applicator's name;
  - b. Agricultural establishment's name;
  - b. Date and time of planned application;
  - c. Location of the planned application identified by the district number and field name; and
  - d. Identity of the product(s) being applied by trade name and EPA registration number as applicable.
3. Any person who applies pesticide or fertilizer material aerially shall not allow the pesticide or fertilizer material to move onto a non-target area or come into contact with any person.

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4. The aerial application of a pesticide or fertilizer material shall not become a nuisance, as defined under the Nuisance Ordinance, GRIC Code § 8.1203, Acts Constituting Nuisance, and subject to the provisions and scope of the GRIC Code, Title 8, Chapter 12, Nuisances.
5. Persons shall not apply pesticides or fertilizer material aerially:
  - a. Within one-quarter ( $\frac{1}{4}$ ) mile of any permanently or intermittently occupied building or areas commonly utilized for mass gatherings.

Waivers will be considered in accordance with Section 18.317 when explicit written permission is given by all legal owner(s) of the building to infringe upon the one-quarter ( $\frac{1}{4}$ ) mile restriction or the building is legally owned and operated by the person(s) requesting the aerial application.
  - b. Within five hundred (500) feet of an operating school bus.
  - c. Within one hundred (100) feet of any person.
  - e. Whenever the wind velocity exceeds five miles per hour, unless the pesticide label specifies a different wind speed.
  - f. Over the surface of or in waters of the United States as defined in 40 C.F.R. § 120.2.

### **18.308. Pesticide Storage Requirements.**

A. **Applicability.** Notwithstanding Section 18.301.D.1, this section applies to any condition in which a pesticide is placed or left in a location for preservation, disposal or later use in excess of 72 hours.

#### **B. General Provisions.**

1. All stored chemicals meeting the EPA definition of a pesticide requiring a pesticide label must have said label affixed on the outside of the pesticide container. The label must be intact and legible to properly identify the contents of the container.
2. Pesticides shall be stored in strict conformity with the label and labeling of the EPA-registered pesticide.
3. Stored service containers which contain a pesticide shall have affixed to the service container a durable and legible label or tag that lists the:
  - a. Brand or trade name of the pesticide;
  - b. EPA registration number;

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- c. Name and percentage of the active ingredient;
  - d. Dilution;
  - e. EPA-assigned signal word (danger, warning, or caution) for the registered label; and
  - f. Phrase “KEEP OUT OF REACH OF CHILDREN.”
4. Pesticides are prohibited from being stored:
- a. In a manner that is accessible to unauthorized persons;
  - b. In a manner that places the pesticide in either direct contact with or in a location which could contaminate a product meant for human or animal consumption;
  - c. In any container or in any way that could cause any person to reasonably mistake the contained pesticide for a product meant for human or animal consumption;
  - d. Above or below incompatible chemicals;
  - e. In a manner which exposes the pesticide to direct sunlight or rain; or
  - f. In a manner in which spilled pesticide could cause contamination of soil, water, or other natural resources.
5. Persons shall have ready access to the following at the location of pesticide storage:
- a. Decontamination equipment: soap, a minimum of one (1) gallon of water and single use towels;
  - b. An emergency eyewash station capable of delivering gently running water at a rate of at least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes when stored pesticides require protective eyewear for use;
  - c. The name, address, and telephone number of the nearest emergency medical care facility or equivalent;
  - d. A spill response action plan which identifies how the person would respond in the event of a spill to prevent, control or limit contamination of soil, water

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or other natural resources and the tools necessary to implement the plan;

- e. A specimen label and safety data sheet for each pesticide stored at all times; and
- f. Signage conspicuously placed within five (5) feet that warns individuals that pesticides are stored inside.

### **18.309. Recordkeeping Requirements.**

A. **Applicability.** Notwithstanding Section 18.301.D.1, this section is applicable to all persons who conduct pesticide applications or sell restricted use pesticides or devices.

#### **B. General Provisions.**

- 1. All records shall be legible, true and accurately maintained.
- 2. Each person shall keep all records current and shall make such records available for inspection and copying by representatives of the EPA or the Department for a period of at least (2) years from the date of use, sale, or disposition of the pesticide.

#### **C. General Use Pesticides.**

- 1. Persons who conduct a non-agricultural use application shall maintain records which contain:
  - a. Name and address of the person for whom the pesticide was applied, and a description or address of the site where the application occurred;
  - b. Date of the pesticide application;
  - c. Target pest or purpose of pesticide application;
  - d. Trade name or common name of the pesticide used and its EPA registration number;
  - e. 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
  - f. Name of the applicator who conducted the pesticide application.
- 2. Persons who conduct an agricultural use application shall maintain records which contain:

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- a. Date the recommendation was written;
- b. Pest conditions present;
- c. Anticipated date of harvest;
- d. Restricted entry interval;
- e. Label days to harvest;
- f. Date recommended for the pesticide application;
- g. Specific site being treated;
- h. Township, range, and section of the site;
- i. Number of acres or sites in each section being treated;
- j. Additional field description, if any;
- k. Trade name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under the FIFRA, 7 U.S.C. § 136p, to be applied;
- l. Rate and unit of measure per acre or dilution per 100 gallons;
- m. Total quantity of pesticide concentrate to be applied;
- n. Total acres to be treated and total volume per acre, or total number of sites to be treated;
- o. Supplemental label requirements;
- p. Method of pesticide application;
- q. Label restrictions or special instructions, if any;
- r. Anticipated pesticide delivery location;
- s. Name of the dealer;
- t. Name of the Agricultural Establishment upon whose site the pesticide will be applied;
- u. Name of the person making the application; and

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- v. Name and signature of the person making the recommendation.

### D. **Restricted Use Pesticides.**

1. Each person who applies or contracts with another person to apply a restricted use pesticide on property owned or operated by another person shall keep and maintain at their principal place of business a true and accurate record of the use of a restricted use pesticide which contains the:
  - a. Name and address of the person for whom the pesticide was applied;
  - b. Location of the pesticide application;
  - c. Target pest(s);
  - d. Specific crop or commodity, as appropriate, and site, to which the pesticide was applied;
  - e. Year, month, day, and time of application;
  - f. Trade name and EPA registration number of the pesticide applied;
  - g. Amount of the pesticide applied and percentage of active ingredient per unit of the pesticide used; and
  - h. Type and amount of the pesticide disposed of, method of disposal, date(s) of disposal, and location of the disposal site.

### E. **Restricted Use Pesticide Dealer.**

1. A dealer of a restricted use pesticide or device shall maintain at each individual dealership records of each transaction where a restricted use pesticide is made available for use by that dealership to a certified applicator. Record of each such transaction shall include the following information:
  - a. Name and address of the residence or principal place of business of each person to whom the pesticide was made available for use;
  - b. The certification number on the document evidencing that person's certification, the state (or other governmental unit) that issued the document, the expiration date of the certification, and the categories in which the applicator is certified, if appropriate;
  - c. The product name, EPA registration number, and, if any, the state special local need registration number granted under the FIFRA, 7 U.S.C. § 136p, on the label of the pesticide;
  - d. The quantity of the pesticide made available for use in the transaction; and



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- e. The date of the transaction.
2. No dealer may make a restricted use pesticide available to an uncertified person unless he can document that the restricted use pesticide will be used by a certified applicator, and he maintains the records required in this section. Each restricted use pesticide retail dealer shall maintain records at each individual dealership of each transaction where a restricted use pesticide was made available to an uncertified person for use by a certified applicator. Records of each such transaction shall include the following information:
- a. The name and address of the residence or principal place of business of the uncertified person to whom the restricted use pesticide is made available for use by a certified applicator;
  - b. The name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide;
  - c. The certified applicator's certification number, the state (or other governmental unit) that issued his certification document, the expiration date of the certification, and the categories in which the applicator is certified, if appropriate;
  - d. The product name, EPA registration number, and, if any, the state special local need registration number granted under the FIFRA, 7 U.S.C. § 136v, on the label of the pesticide;
  - e. The quantity of the pesticide made available for use in the transaction; and
  - f. The date of the transaction.

F. **Wood Destroying Organism.** Persons who conduct wood destroying organism applications shall also maintain records that include the type of construction and area of treatment expressed as square footage and linear footage.

G. **Exemptions.** The following persons are exempt from all recordkeeping requirements:

- 1. Persons who solely use antimicrobial pesticides.

**18.310. Pesticide Application Record Reporting Requirements.**

A. **Applicability.**

This section is applicable to all persons subject to maintaining records under Section 18.309.A.

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### B. **General Provisions.**

1. Upon written request by the Department for the production of records, any person subject to reporting requirements under this chapter shall:
  - a. Make the records available for review by the Department within 48 hours or by a later date specified by the Department; and
  - b. Be available to interpret the submitted records if requested by the Department; and
  - c. Persons who cannot timely comply with a request made under Section 18.309.B.2, shall provide written notice to the Department, indicating the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time required to comply.
2. Completed records of the application shall be submitted to the Department on a form provided or acceptable by the Department where applicable, within 30 calendar days of completion by persons who conduct:
  - a. Agricultural applications;
  - b. Fumigation applications; or
  - c. Restricted use applications.
3. Persons who conduct non-agricultural applications to a residence or business shall provide a record of the completed application to their customer upon request by the customer.
4. Persons who conduct a wood destroying organism application shall also leave a treatment tag affixed at the location of treatment at the conclusion of the application.
5. Submitted records shall include all applicable information identified in Section 18.309.

### **18.311. Fees, Fines, and Program Income Account.**

- A. **Program Income Account.**
  1. Fees and fines shall be deposited into an existing program income account designated for the administration and enforcement of this chapter.

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2. Any monies contained in the account 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.

**B. Fees.**

1. All fees shall be non-refundable.
2. Renewal applications received later than 30 calendar days after the expiration date of the authorization shall be subject to the new application fee schedule.
3. **Fees: Permit.** The person applying for a pesticide use permit shall submit fees with the application according to the following schedule:

Type of Pesticide Use Permit	New Application Fee	Renewal Fee	Application Fee
Agricultural Use	\$150	\$100	
Non-Agricultural Use	\$150	\$100	

4. **Fees: Registration.** Persons applying for the following types of registrations shall submit fees with the application according to the following schedule:

Type of Registration	New Application Fee	Renewal Fee	Application Fee
Producer	\$ 200	\$ 150	
Dealer: Restricted Use Pesticide	\$ 200	\$ 150	

- C. **Fees: Certification.** Persons applying for the following types of certifications shall submit fees with the application according to the following schedule:

Type of Certification	New Application Fee	Renewal Fee	Application Fee
Community Certified Applicator	\$ 25	\$ 15	

- D. **Fines.** All fines shall be administered in accordance with an approved Enforcement and Response Policy while calculated by the use of an Administrative Civil Penalty Matrix.

- E. **Exemptions.** Community departments and entities; Community member owned businesses; Community members; any governmental jurisdiction; as well as any person employed within, are exempt from all fees.

**18.312. Inspections.** Inspections shall be conducted in accordance with an approved Neutral Inspection Scheme.

**A. Right of Entry.**

1. Department representatives shall be permitted to enter upon any structure, property, site, or any part thereof, for the purpose of conducting inspections, investigations, observations, sampling, records examination and any other reasonable actions necessary to evaluate compliance with this chapter.
2. Inspections shall be conducted at the discretion of Department representatives and may be conducted with no prior notice.

**B. Ready Access.** Department representatives shall be provided immediate access to all points on any property for the purposes of inspection, sampling, records examination, and any other reasonable actions for determining compliance of this chapter.

**C. 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 authorizations 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;

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- 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; and
  - 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 ten 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 continues to be withheld or barred, the Department may exercise its right to suspend or revoke a person's authorization pursuant to Section 18.313.B., or pursue other penalties as provided for under this chapter.

### **18.313. Civil Enforcement.**

- A. **General Provisions.**
  1. The Department is authorized to administer enforcement measures and levy penalties in accordance with an approved Enforcement Response Policy with Administrative Civil Penalty Matrix.
  2. The enforcement measures available to the Department to achieve compliance include but are not limited to:
    - a. Informal measures:
      1. Opportunity to correct; and

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2. Notice of violation.
  - b. Formal measures:
    1. Administrative compliance order.
  - c. Assessment of civil penalties; or
  - d. Referral to the EPA to pursue federal civil or criminal enforcement measures.
3. Nothing herein shall preclude the Department from taking immediate action in response to an imminent or substantial endangerment to human health or the environment.

### **B. Denial, Suspension, or Revocation.**

1. Denial. The Department may deny an authorization if the application demonstrates that the applicant does not meet or is incapable of meeting the requirements of this chapter or has had a similar authorization revoked within the three years prior to the date of the application.
2. Suspension or revocation.
  - a. The Department may suspend or revoke an authorization issued under this chapter for good cause, including, but not limited to:
    1. Failure to notify the Department of significant changes to the authorized person or activity;
    2. Misrepresentation, submittal of false or inaccurate information, or failure to fully disclose all relevant facts in an authorization application;
    3. Failure to provide timely notice or submit records or other information to the Department as required under this chapter;
    4. Refusing to allow the Department timely inspection of the premises and records;
    5. Failure to meet compliance schedules;
    6. Violation of any requirement set forth or any terms or conditions of an authorization;

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- b. Before suspending an authorization, the Department shall provide notice to the authorization holder, by certified mail, of the Department's intent to suspend or revoke the authorization. Such notice may include an administrative compliance order issued by the Department, ordering that noncompliance with authorization requirements be corrected within a specified timeframe. If the person fails to correct the noncompliance within the timeframe specified by the administrative compliance order, the authorization shall be deemed suspended or revoked.
    - c. The Department may immediately suspend an authorization and require the cessation of any activity for any suspected violation that would constitute an imminent and significant risk to public health, safety, and or property. Such suspension shall remain in effect for a minimum of 15 calendar days to allow the Department to investigate the suspected violation.
  3. Appeal. A notification by the Department denying or revoking a permit, registration or certification is appealable to an administrative law judge and the final order of revocation from the Department is appealable to the Community Court in accordance with the administrative appeals requirements set forth in Section 18.315.

### **C. Civil Penalties.**

1. A person who is found to be in violation of this chapter shall be subject to:
  - a. An order imposing an administrative civil penalty of up to \$5,000.00 for each violation; or
  - b. A civil judicial penalty of up to \$10,000.00 for each violation.
2. At the request of the Department, the General Counsel may file an action in the Community Court to recover penalties provided for in this section.
3. In determining the amount of a civil penalty under this section, the Department or the Community Court, as appropriate, shall consider the following:
  - a. The severity of the violation;
  - b. The size of business;
  - c. The toxicity of the pesticide involved;
  - d. Actual or potential harm to human health;
  - e. Actual or potential harm to the environment;

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- f. Compliance history of the violator within the last 5 years;
  - g. Culpability of the violator; and
  - h. Any special circumstance or extraordinary adjustments as allowed by the Enforcement Response Policy and Administrative Civil Penalty Matrix.
4. Exclusion. Any person who is not a member of the Community who is found by the Community Court to have committed any violation(s) under this chapter may be excluded from the Community, pursuant to Title 8, Chapter 1, of the GRIC Code.

### **D. Injunctive Relief.**

1. At the request of the Department, the Community 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 Department has reasonable cause to believe that a person has:
  - a. Violated or is in violation of any provision of this chapter, a compliance order, or any provision of a permit issued under this chapter;
  - b. Violated or is in violation of an administrative compliance order that is in effect; or
  - c. Created or is creating an imminent and substantial endangerment to public health or the environment.
2. Under this section, the Department 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 that violate any provision of this chapter.
3. An action brought pursuant to this section shall be commenced within two years of the occurrence of the violation; however, when an investigation has been undertaken by the Department, the action shall be commenced within one year of the completion of the investigation. At any time during or after the time period specified in this section, the Department may refer the matter to the EPA for action.

### **18.314. 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 EPA.



B. Any person subject to the criminal jurisdiction of the Community, who intentionally, knowingly or recklessly violates any provision, requirement or prohibition of this chapter or a permit 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. 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.

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

### **18.315. 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 an authorization authorized by this chapter;
2. Revocation or suspension of an authorization authorized by this chapter;
3. The issuance of an administrative compliance order;
4. The imposition, by order, of an administrative civil penalty; and
5. Any other Department action or decision described as an appealable action under this chapter.

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 18.315.C. The notice shall identify the Pesticide Ordinance 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 calendar days after receiving the notice prescribed in Section 18.315.B.1.
3. 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 and who exercised any right to comment on the action as provided by law or rule,

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provided that the grounds for appeal are limited to issues raised in that party's comment. The Department 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 Sections 18.315.E and F.

### C. **Process Service.**

1. Every notice or decision under this section shall be served by personal delivery, 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 Department shall notify the Executive Office of the appeal within five (5) business days.
2. The Department shall provide:
  - a. Caption of the matter, including the names of the parties;
  - b. 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 calendar 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 the:

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1. Name of the administrative law judge assigned to hear the matter; and
  2. Date, time, and location of the hearing.
- F. Scheduling of Hearing.**
1. Except as provided in Section 18.315.F.2, below, hearings for appealable Department actions shall be held within 60 calendar days after the assignment of the administrative law judge.
  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 calendar days before the hearing. The notice shall include a:
    - a. Statement of the time, place, and nature of the hearing;
    - b. Statement of legal authority and jurisdiction under which the hearing is to be held;
    - c. Reference to the particular sections of the chapter involved; and
    - d. Short and plain statement of the matters asserted.
  4. Notwithstanding Section 18.315.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 ten calendar 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;

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- 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 the GRIC Code Title 4, Courts and Procedures.
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 calendar 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 calendar 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 Department.
3. Within 30 calendar days after the date the administrative law judge sends a copy of the recommended decision to the Department, the Department may review the decision and accept, reject or modify it in accordance with the following requirements:
  - a. If the Department declines to review the administrative law judge's decision or accepts the decision, the Department shall serve on all parties the Department's final decision accepting the administrative law judge's decision on all parties.
  - b. If the Department rejects or modifies the administrative law judge's decision, prior to rejecting or modifying the decision, the Department shall consult with and obtain the consent of the Executive Office or his or her designee. The Department shall thereafter serve on all parties the Department's final decision and a copy of the administrative law judge's decision with the Department's rejection or modification and a written justification setting forth reasons for the rejection or modification.
4. The Department's final decision shall state separately the findings of fact and conclusions of law.
5. A party may file in the Community Court for judicial review of a final administrative decision pursuant to Section 18.316..

**18.316. 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.

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2. Unless review is sought of an administrative decision within the time and in the manner provided in Section 18.316.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 aggrieved party by filing a complaint within 30 calendar days from the date when a copy of the decision sought to be reviewed is served upon the aggrieved party. 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 Community Court and Community Court of Appeals for appeals from the 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 Department.

**E. Appearance of Defendants.** The Department shall answer the complaint within 30 calendar 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 Department 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 Department 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 Community Court. No new or additional evidence in support of or in opposition to a finding,

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order, or decision of the Department shall be heard by the Community Court.

2. The Community Court shall affirm the Department's final administrative decision unless, after reviewing the record, the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion.
3. The Community Court shall remand an action to the administrative law judge for the purpose of holding a hearing if no hearing was yet held by an administrative law judge, the proceedings before the administrative law judge were not stenographically reported or mechanically recorded so that a transcript might be made, or for the purpose of taking additional evidence when from the state of the record or otherwise it appears that such action is just.

### 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; or
  - 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

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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.

### 18.317. Waivers and Variances.

#### A. General Provisions.

1. The provisions contained in this chapter or contained in an authorization are intended to apply to a variety of conditions and circumstances. It is recognized that strict compliance with all regulations prescribed might not fit every conceivable situation.
2. When strict compliance with the requirements of this chapter is impractical or extraordinary and unusual conditions exist, a person may request a waiver or variance by submitting a written request to the Department. A request shall include:
  - a. Applicant or person's name and contact information;
  - b. A specific citation of the regulation for which a waiver or variance is being sought;
  - c. A full explanation of why a waiver or variance is necessary;
  - d. A statement of whether the requested waiver or variance can be of limited duration; and
  - e. A full explanation of how granting the requested waiver or variance would be consistent with the intent of this chapter and would adequately protect human health and the environment.
3. The Department shall issue a written response to a request for a waiver or variance within 30 calendar days of receipt of the request.
4. If the request is denied, the written response shall specify the reason(s) for the denial.



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5. If the request is approved, all requirements not waived shall apply.
6. No waiver or variance shall be granted that, in the judgment of the Department, contravenes the intent of this chapter or attempts to waive, override, or circumvent the FIFRA and its amendments.
7. The denial of a waiver or variance is not an appealable action.

### **18.318. Signatures and Certifications.**

#### **A. General Provisions.**

##### **1. Signatories.**

- a. All submittals required to be provided to the Department as set forth under this chapter, including, but not limited to, authorization applications, records, reports, and notifications shall be signed as follows:
  1. For a corporation: by a responsible corporate officer, such as a president, vice-president, treasurer or any other person who performs similar policy or decision-making functions for the corporation;
  2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
  3. For a Community department or entity: by the Director of that department or entity;
  4. For a non-Community government agency: by either a principal executive officer or ranking elected official; or
  5. By a duly authorized representative of that person if:
    - a. The authorization is made in writing by a person described in Sections 18.318.A.1.a.1 through 4 above;
    - b. The authorization specifies either a named individual or any individual occupying a named position having responsibility for the overall operation of the regulated facility, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
    - c. The written authorization is submitted to the Department in advance.

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- b. If an authorization under Section 18.318.A.1.a.5 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section 18.318.A.1.a.5 must be submitted to the Department prior to or together with any authorization applications, records, reports, and notifications to be signed by an authorized representative.

### 2. Certifications.

- a. Any person signing a document under Section 18.318.A.1.a shall make the following certification:

*"I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, representative, and complete and was obtained in accordance with established written procedures. I am aware that there are significant consequences for submitting false information."*

- b. In addition, any person signing an authorization application shall certify the following:

*"I understand that signing this application constitutes a consensual relationship and agree to be subject to the regulations and the compliance and enforcement provisions of Gila River Indian Community laws, including the Pesticide Ordinance."*