

Chemical Emergency Planning
And
Community Right –To- Know
Ordinance
GR-01-02



Gila River Indian Community Code
Title 17 Chapter 7

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GILA RIVER INDIAN COMMUNITY

SACATON 85247

ORDINANCE GR-01-02

AN ORDINANCE ENACTED AS THE CHEMICAL EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ORDINANCE TO BE CODIFIED AT TITLE 17, CHAPTER 7, OF THE GILA RIVER INDIAN COMMUNITY LAW AND ORDER CODE

WHEREAS, the Gila River Indian Community (the “Community”) pursuant to its sovereign powers, is committed to protecting the life, health, safety, property, welfare and environment of its residents; and

WHEREAS, the Gila River Indian Community Council (the “Community Council”) pursuant to Article XV, Section 1(a)(9) of the Gila River Indian Community Constitution and Bylaws (March 17, 1960) may enact ordinances to protect the health, peace, morals, education, and general welfare of the Community and its members; and

WHEREAS, in order to promote and protect the health and general welfare of Community members, the Community supports the rights of its members, lawful residents, business and industry owners and operators to obtain information about the presence of hazardous chemicals in the Community; and

WHEREAS, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III, 42 U.S.C. §§ 11000 *et seq.*), specifically mandates the Governor to appoint a Chemical Tribal Emergency Response Commission (“C-TERC”) to create a chemical emergency response plan for the protection of the Community; and

WHEREAS, the purpose of the C-TERC is to develop, implement and maintain a process for chemical emergency notification of chemical accidents and releases, reporting of chemicals inventories and reporting releases of toxic chemicals; and

WHEREAS, the Community Governor has appointed a C-TERC to implement Superfund Amendments and Reauthorization Act, Title III (42 U.S.C. §§ 11000 *et seq.*), to protect and enhance human health and the environment, including land, air, and water; and

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WHEREAS, the Community Governor, in compliance with federal law, has appointed the C-TERC to improve management of extremely hazardous substances, hazardous chemicals and toxic chemicals within the Community and to create a chemical emergency response plan for the Community in an effort to maintain a clean, healthy and safe environment for the Community; and

WHEREAS, the C-TERC has developed, obtained public comment on, reviewed the public comments and made appropriate changes to the core sections of the proposed Gila River Indian Community Chemical Emergency Planning and Community Right-To-Know Ordinance; and

WHEREAS, the C-TERC has established mechanisms for chemical emergency prevention, preparedness, response and mitigation; and

WHEREAS, the C-TERC is authorized to develop and implement the chemical emergency response plans for the protection of the Community and the environment; and

WHEREAS, the C-TERC has established requirements and procedures for dissemination of information to the general public regarding the presence and use of hazardous chemicals in the Community and the exterior boundaries of the Community; and

WHEREAS, the C-TERC formally approved the revised core sections of the ordinance at a duly called meeting on June 17, 1999; and

WHEREAS, the C-TERC further developed additional sections of the Gila River Indian Community Chemical Emergency Planning and Community Right-To-Know Ordinance related to administrative procedures and judicial review; and

WHEREAS, the C-TERC provided for public comment on and received no public comments on the additional sections of the Ordinance related to administrative procedures and judicial review; and

WHEREAS, the C-TERC formally approved the administrative procedures and judicial review sections of the Ordinance at a duly called meeting on February 17, 2000.

NOW THEREFORE BE IT ENACTED, the Chemical Emergency Planning and Community Right-to-Know Ordinance, codified as Title 17, Chapter 7, of the Gila River Indian Community Law and Order Code, to take effect thirty (30) days from the date of enactment.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a), (5), (7), (9), (12), (15) and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, Ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted this 16th day of January, 2002, at a Regular Community Council Meeting held in District 3, Sacaton, AZ, at which a quorum of 17 Members were present by a vote of: 17 FOR; 0 OPPOSE; 0 ABSTAIN; 0 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

/Signed/

GOVERNOR

ATTEST:

/Signed/

COMMUNITY COUNCIL SECRETARY

TITLE 17

HEALTH AND WELFARE

Chapter 7: EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ORDINANCE

Part 100—TITLE, PURPOSE AND DEFINITIONS

7.100. TITLE

Chapter 7 of Title 17 of the Gila River Indian Community (the "Community") Law and Order Code shall be called the Emergency Planning and Community Right-to-Know Ordinance.

7.101. AUTHORITY AND PURPOSE

The Community enacts this Ordinance under its inherent civil legislative, adjudicative and regulatory authority pursuant to the express delegation of authority by Congress under the Indian Reorganization Act (25 U.S.C. §§ 461 *et seq.*), which provided the Community authority to organize, adopt the Gila River Indian Community Constitution and Bylaws (March 17, 1960) and to enact ordinances governing conduct within the exterior boundaries of the Reservation (25 U.S.C. § 476). The Community enacts this ordinance to regulate certain activities within the Reservation as prescribed under *Montana v. United States*, 450 U.S. 544 (1981). The Community finds that the activities regulated under this ordinance threaten or affect the political integrity, economic security or health and welfare of the Community, including activities of non-members where: (1) the non-members enter into commercial dealing, contracts, leases or other arrangements that create a consensual relationship between the non-member and the Community; (2) the conduct of the non-member threatens or affects the political integrity, economic security or health and welfare of the Community; and (3) the Community provides to non-members the privileges and benefits of tribal services or other advantages of civilized society.

More specifically, this ordinance is enacted to establish mechanisms for chemical emergency prevention, preparedness, response and mitigation and authorizes the development and implementation of chemical emergency response plans for the protection of the Community and the environment. The ordinance establishes requirements and procedures for dissemination of information to the general public regarding the presence and use of hazardous chemicals in the Community and for related purposes. This ordinance establishes an Emergency Response Commission to serve as an advisory body.

7.102. DEFINITIONS

A. In this ordinance, the following definitions, unless otherwise provided apply:

1. **Administrator** means the Administrator of the United States Environmental Protection Agency or his or her designee.
2. **Advisory Body** means the entity identified in 7.300.G of this ordinance.
3. **C-TERC** means the Community Chemical Trial Emergency Response Commission appointed by the Governor of the Gila River Indian Community to implement the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 11000 *et seq.*), P.L. 109-499, an Act to extend and amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*).
4. **CAS number** means the Chemical Abstract Service number assigned to a chemical or substance.
5. **CFR** means the United States Code of Federal Regulations.
6. **Chemical Emergency Response Plan** means the plan prepared by and annually reviewed by the LEPC.
7. **Coordinator of Information** means the person designated to serve as the contact person for communications.
8. **Community** means the Gila River Indian Community, its departments and governmental service agencies.
9. **Community Code** means the adopted Gila River Indian Community Code of Law and Order.
10. **Council** means the Community Council, the legislative branch of the government of the Gila River Indian Community.
11. **Department** means the Department of Environmental Quality of the Gila River Indian Community.
12. **Director** means the Executive Director of the Department of Environmental Quality.
13. **District** means or refers to one of the seven (7) political subdivisions into which the Community is organized pursuant to Article XI of the Constitution and Bylaws of the Gila River Indian Community (March 17, 1960).

14. **Emergency Operations Center (EOC)** means the designated location from which incident management support activities necessitated by response to an actual or threatened natural and/or technological incident are coordinated. Activation shall be at the direction of the Governor through the Office of Emergency Management, Coordinator or designee or upon the request of the Incident Commander.

15. **Emergency Planning District or EPD** means an emergency planning/response area designated by the Commission pursuant to Section 7.301.A. of this ordinance.

16. **EPA** means the United States Environmental Protection Agency or a successor agency thereto.

17. **EPCRA** means the Emergency Planning and Community Right-to-Know Act of 1986 and shall be considered synonymous with Public Law (P.L.) 99-499, SARA Title III, and the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. §§ 11000 *et seq.*).

18. **EPCRA Coordinator** refers to the person hired by the Department of Environmental Quality to provide staff support to the C-TERC and other duties as described by Community job announcement number 097-120.

19. **Extremely Hazardous Substance** means a substance identified by the Director pursuant to an established Extremely Hazardous Substances ordinance of the Gila River Indian Community Code or by the Administrator pursuant to Section 302 of EPCRA

20. **Facility** means any building, equipment, structure or other stationary item located on a single site or on contiguous or adjacent sites which sites are owned or operated by the same person (or by any person which controls, is controlled by or under common control with such person). Such term shall additionally refer to motor vehicles, rolling stock and aircraft when related to emergency notification requirements arising from Section 7.303 of this Ordinance.

21. **Facility Chemical Emergency Response Plan** means a plan prepared and made available by a facility that outlines effective prevention and response in the event of a Reportable Quantity Release from that facility.

22. **Facility Emergency Coordinator** means the individual designated by a facility to act as the facility contact person.

23. **Fire Department** means the Gila River Indian Community Fire Department.

24. **General Counsel** means the Community General Counsel or his or her authorized representative.

25. **Governor** means the Chief Executive Officer of the Community.

26. **Hazards analysis** means analysis prepared pursuant to the *Technical Guidance for Hazards Analysis - Emergency Planning for Extremely Hazardous Substances*, prepared by the U.S. Environmental Protection Agency, Federal Emergency Management Agency, U.S. Department of Transportation and dated December 1987, or a publication issued to supersede such document, or a document, electronic program or procedure approved by the C-TERC for use by a facility that is subject to chemical emergency planning requirements.

27. **Hazardous Chemical** means a chemical defined under 29 C.F.R. § 1910.1200(c) of (the OSHA Hazard Communication Standard). As used in this ordinance, the term includes but is not limited to specific groupings of chemicals such as extremely hazardous substances, hazardous substances, highly hazardous chemicals, hazardous air pollutants, regulated substances and toxic chemicals. For purposes of the Community EPCRA program, unless more stringent Community or Federal requirements apply, the exemptions listed in 29 C.F.R. § 1910.1200 b(6)iii through viii shall apply.

28. **Hazardous Substance** means a substance on the list defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601(14).

29. **Landowner or Lessor** means an individual, a group of individuals, or the Gila River Indian Community, or whoever is the owner or lessor of the land, which includes land held in trust for Indians by the United States Government.

30. **LEPC Coordinator** means the member of a Local Emergency Planning Committee designated to serve as the contact person for communications. In the event the Commission establishes a single Emergency Planning District for the Community, the Commission Coordinator shall serve as the LEPC Coordinator.

31. **Lists of Lists** is defined by Environmental Protection Agency Publication EPA 550-B-96-015, December 1996 or its successor.

32. **Local Emergency Planning Committee** or **LEPC** means an entity established by the Commission.

33. **Manufacture** means to produce, prepare, import or compound a hazardous chemical.

34. **Material Safety Data Sheet** or **MSDS** means the chemical information sheet developed pursuant to 29 C.F.R. § 1910.1200 (g).

35. **Office of Emergency Management** means the office that provides the necessary direction, coordination, guidance, and assistance so that a comprehensive emergency preparedness system exists for all hazards, in all phases of emergency management (mitigation, preparedness, response, and recovery).

36. **OSHA** means the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*.

37. **Operator** means the person responsible for the overall operation of a facility.

38. **Owner** means the person who owns a facility or part of a facility, excluding the Community when the Community acts as a landowner or lessor.

39. **Person** means an individual, trust, firm, joint stock company, corporation (including governmental instrumentalities and corporations chartered pursuant to the law of any jurisdiction), municipality, commission, political subdivision of the state of Arizona, interstate body or any federal or American Indian Tribal Government but shall not include the Community when its role is strictly as landowner or lessor.

40. **Process** means the preparation of a hazardous chemical after its manufacture for distribution in commerce either:

- a. In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing the chemical; or
- b. As part of an article containing a hazardous chemical.

41. **Region IX** means Region IX of the EPA.

42. **Regulated Substance** means a chemical regulated under sections 112 (r) and 301 of the Clean Air Act, as amended, 42 U.S.C. §§ 7412 (r), 7601, and the regulations promulgated there under, including 40 C.F.R. Part 9 and 68.

43. **Release** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles) of any hazardous or extremely hazardous substance.

44. **Reportable Quantity Release** means a release of a hazardous chemical at or above the established Community or federal law threshold which requires emergency notification.

45. **Residential user** means any individual, single/multiple family dwelling residing within the exterior boundaries of the Community.

46. **Reservation** means the “Gila River Indian Reservation” as organized under the Indian Reorganization Plan of June 18, 1934 (48 Stat. 984), amended by the Plan of June 15, 1953 (49 Stat. 378) and recognized by the Constitution and By-Laws of the Gila River Indian Community and approved by the Secretary of the Interior of the United States of America on March 17, 1960, as well as any land held in trust for the Community or its members by the United States and land constituting Indian country within the meaning of 18 U.S.C. § 1151.

47. **Threshold Planning Quantity** means a chemical designated as an extremely hazardous substance by Title III of the Superfund Amendments and Reauthorization Act, the inventory amount at a facility that results in a requirement for the material to be reported by the facility and be included in the emergency response plan for chemical spills or releases

48. **Tier Two** means and refers to the requirements of subsection 312 (d) (2) of EPCRA and the requirements of section 7.402 of this ordinance.

49. **Title III** means Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499, Emergency Planning and Community Right-to-Know Act of 1986, Title 42 of the United States Code, ("SARA") and regulations issued thereunder, which provisions are herein incorporated by reference.

50. **Toxic Chemical** means a substance listed by the Administrator pursuant to Section 313(c) of Title III and listed at 40 C.F.R. § 372.65, or a superseding regulatory provision, and/or published in the EPA’s annual Toxic Release Inventory Reporting Instruction Package.

51. **Trade Secret** shall have the meaning effected under the provisions of Section 319 of EPCRA.

52. **USC** means the United States Code.

B. References to any provision of federal law or regulation contained herein shall be understood to include, by reference, any and all subsequent revisions to such provision or regulation.

Part 200—EMERGENCY PLANNING REPORTING REQUIREMENTS ESTABLISHED BY THE COMMUNITY

7.200. HAZARDOUS CHEMICALS, THRESHOLDS AND MINIMUM REPORTING THRESHOLDS ESTABLISHED UNDER COMMUNITY LAW; DUTY TO REPORT

- A. Upon Commission Approval, the Director may establish, with respect to any hazardous chemical, minimums for reporting thresholds that are more stringent than the threshold planning or minimum reporting quantities established by the Administrator. The Director cannot set thresholds less stringent than the Administrator and shall maintain and publish such decisions as well as those decisions resulting from actions under section 7.302 N. of this ordinance.
- B. The Director will make available a list of adjusted hazardous chemical thresholds and quantities.
- C. An owner or operator of a facility shall be responsible for compliance with the requirements established by the Community including requirements in this ordinance and/or regulations promulgated in support of this ordinance.
- D. The owner and operator of a facility subject to the provisions of this ordinance shall be jointly and severally liable for any failure to comply with the provisions of this ordinance.
- E. Nothing in this ordinance shall lessen the obligations or liabilities of any person under federal law.

Part 300—CHEMICAL EMERGENCY PREPAREDNESS AND RESPONSE

7.300. GILA RIVER INDIAN COMMUNITY CHEMICAL TRIBAL EMERGENCY RESPONSE COMMISSION (C-TERC); ADVISORY BODY, LOCAL EMERGENCY PLANNING COMMITTEE(S); POWERS AND DUTIES

- A. The Governor is authorized to establish the Gila River Indian Community Chemical Tribal Emergency Response Commission (C-TERC). The Commission shall consist of the following voting members:
 - 1. A Chairperson, appointed by the Governor, who may be selected from subsection 2 below and;
 - 2. The directors, or their designees, of the:
 - a. Community Manager;

- b. Department of Environmental Quality;
 - c. Department of Public Health;
 - d. Department of Public Works;
 - e. Fire Department;
 - f. Office of Emergency Management;
 - g. Tribal Law Enforcement; and
 - h. A representative of each District who shall serve as a Community-at-Large member. The Community-at-Large members shall be selected by the District they represent, according to a process of the District's own choosing and the representative shall be confirmed by the Governor. An alternate shall also be selected by each District to serve in the absence of the Representative.
- B. The Commission shall exercise planning and oversight functions.
- C. Subject to available funding, the Department may provide administrative support and exercise the enforcement authority necessary for the effective implementation of the provisions of this Ordinance.
- D. Compensation to Commission and Advisory Body members shall conform to existing Community policy and shall also be subject to the following:
1. The Commission shall determine the training classes and other activities that Commission and Advisory Body members may participate in at program expense.
 2. Community-at-Large members of the Commission shall be compensated for participation in Commission activities. If the Chairperson is not selected from section 7.300 A.2., the Chairperson shall be compensated for participation in Commission activities. Such compensation shall be made pursuant to rule or policy properly adopted by the C-TERC.
 3. C-TERC and Advisory Body members may receive prepaid or reimbursed payment for travel and out-of-pocket expenses incurred in relation to specific Commission approved activities provided such prepayment and/or reimbursement is not otherwise payable or reimbursable from funds of the agency at which such member is employed. Subject to funding, the C-TERC may pay for other pre-approved Community agencies training travel requests.

- E. The C-TERC shall adopt its own rules of order and shall set terms for participation by Community-at-Large members. Such rules shall address the requirements contained in the provisions of this Ordinance, including but not limited to:
1. The adoption of rules, policies, procedures and guidelines and provision for the modification, suspension and repeal of such rules and policies. The authority to adopt rules, policies, procedures and guidelines includes a duty to:
 - a. Designate Local Emergency Planning District(s) in accordance with section 7.301.A.
 - b. Appoint Local Emergency Planning Committee(s) in accordance with section 7.301.B.
 - c. Appoint a Coordinator for Information. The EPCRA Coordinator will serve as the coordinator of information unless the C-TERC takes formal action to appoint another person; and
 - d. Establish procedures for receiving and processing public information and requests.
 2. Provide for the organization of C-TERC membership into committees and the establishment of meeting places and times as often as necessary to implement EPCRA and the provisions of this Ordinance.
 3. Establish and maintain a repository for information submitted pursuant to this ordinance and provide notice regarding:
 - a. The location where information obtained pursuant to this ordinance is maintained; and
 - b. Hours, consistent with normal working hours, during which such information shall be available.
- F. An Advisory Body shall be established to provide technical assistance to the C-TERC and LEPC(s). The Advisory Body shall be appointed by the C-TERC and shall consist of representatives from the following entities:
1. Facility owners/operators subject to the requirements of this ordinance.
 2. Gila River Emergency Medical Services;
 3. Gila River Environmental Health Program;

4. Gila River Health Care Corporation, Facilities Management;
5. Gila River Indian Community Housing Authority;
6. Gila River Indian Community Law Office;
7. Gila River Indian Community Public Relations Office;
8. Gila River Indian Community Rangers; and
9. Land Operations, United States Department of the Interior, Bureau of Indian Affairs, Pima Agency;

G. Subject to the availability of funds, the C-TERC may:

1. Consistent with Community policy and law, procure by contract the temporary or intermittent services of experts or consultants provided such services are to be performed on a part-time or fee-for-services basis. Subject to Community Council approval, the Community on behalf of C-TERC may enter into memoranda of agreement with other jurisdictions and political subdivisions to implement requirements of this ordinance.
2. Establish a program of financial grants to the Districts for the development of local implementation of this ordinance. The C-TERC shall address in its rules or policies procedures for applying for the grants and qualifying criteria for such grants. The Department shall provide technical support for the administration of grants awarded pursuant to this provision.

H. The C-TERC may apply for any reimbursement, grant or gift that may become available and that supports the provisions of this ordinance. Such reimbursement, grants or gifts shall be in the Community's name, and where a signature is required to obligate or name the beneficiary, such signature shall be the Governor of the Community. The C-TERC shall ensure that any monies including, but not limited to, fees, fines grants and gifts, received pursuant to this Ordinance are directed to the Community through the Community Treasurer for deposit in the Community General Fund.

I. Subject to approval by the Community Council, the C-TERC may establish a filing fee schedule to include a late filing fee schedule for facilities subject to the requirements of this ordinance.

J. Subject to approval by the Community Council, the C-TERC may establish a schedule of fines for EPCRA non-compliance based upon the Directors recommendations.

K. All fines and fees shall be deposited in the Community General Fund.

L. The C-TERC shall review and approve plans submitted for each EPD.

7.301. EMERGENCY PLANNING DISTRICTS (EPD); ADVISORY BODY; LOCAL EMERGENCY PLANNING COMMITTEE(S) (LEPC); CHEMICAL EMERGENCY RESPONSE PLANS

A. The C-TERC shall designate a chemical emergency planning district (EPD) or districts as necessary to facilitate the preparation and implementation of a Community chemical emergency response plan(s).

1. The C-TERC shall, in designating EPD(s), consider the distribution of population, businesses subject to the provisions of this ordinance as well as Community and facility response capabilities. An EPD may encompass one or more Districts.

2. The C-TERC may elect to designate a single EPD for the Community. If so, the C-TERC shall also function as the Community LEPC and be responsible for EPCRA planning responsibilities. The single C-TERC/LEPC shall comply with the provisions of Section 303(c) of EPCRA, 42 U.S.C. §11003, and shall fulfill the requirements of subparts C. and D. of this Section. The Advisory Body shall provide technical assistance in the development of EPCRA plans and shall serve to augment, in an advisory status, LEPC membership requirements.

3. Through the use of subcommittees, task groups, and/or consultative services, the C-TERC shall assure that membership in the single C-TERC/LEPC conforms to section B below.

4. The C-TERC/LEPC coordinator shall maintain a current listing of members and indicate which Group or Groups identified in B below are represented.

5. The Community may enter into intergovernmental agreements with the state of Arizona and/or its political subdivisions or other jurisdictions to fulfill the provisions of this Section and to facilitate the implementation of this Ordinance.

B. Subject to the provision of subsection A.2., above, the C-TERC shall appoint members of Local Emergency Planning Committees (LEPCs) for each designated EPD.

1. Each LEPC shall include at least one representative from each of the following groups:

a. Group I- Elected Community Council and District representatives;

- b. Group II- Community members with professional experience in the areas of medicine, law enforcement, civil defense, fire fighting, first aid, health, environmental protection and hospital administration;
 - c. Group III- Broadcast and print media;
 - d. Group IV- Community groups; and
 - e. Group V- Owners and operators of facilities subject to the requirements of this ordinance.
- C. The C-TERC shall supervise and coordinate the activities of each LEPC.
- D. The LEPC, if not formed as a joint C-TERC/LEPC shall appoint a Chairperson and an LEPC coordinator from among its members and shall adopt procedural rules by which the LEPC will function, including, procedures for:
- 1. Public notification of LEPC activities that include: annual publication of emergency response plans, Material Safety Data Sheets/chemical lists, Tier Two Hazardous Chemical Inventory Forms, Toxic Chemical Release Inventory Forms and follow-up emergency reports that have been submitted to the LEPC are available for public review during normal working hours.
 - 2. Coordination and Scheduling of Public Meetings.
 - 3. Receiving and processing public comments and the response to such comments by the LEPC with respect to information available pursuant to Section 7.400 of this ordinance;
 - 4. (a). The preparation, distribution and annual review of a chemical emergency response plan. Chemical emergency response plans may be based on information obtained from:
 - (1). The C-TERC, the Department and other emergency and disaster agencies of the Community;
 - (2). The state of Arizona and subdivisions of the state of Arizona; and
 - (3). Facilities subject to this ordinance and EPCRA.

(b). Chemical emergency response plans shall include:

(1). The identification of the heads of the Community emergency response organizations for designated areas or District officials responsible to make determinations necessary to implement the chemical emergency response plan. Unless otherwise specifically stated, the LEPC plan is considered implemented when there is a public response by the Fire Department to an incident involving hazardous materials.

(2). Specialized equipment, facilities, personnel and emergency response organizations available in the EPD to respond to releases; and

(3). Mutual aid agreements with other EPDs, and the allocation of emergency response resources for responding to releases, if applicable.

5. Procedures for submission and review of chemical emergency response plans. Plans shall be submitted to:

a. The C-TERC, who may coordinate plan reviews with other agencies.

b. Each District within the subject EPD, for incorporation into the District Service Center's emergency operations plan; and

c. The Fire Department.

6. Necessary steps to insure that the EPD chemical emergency response plan is coordinated with the chemical emergency response plans of adjoining EPDs, as applicable.

7. Annual testing and evaluation of the chemical emergency response plan.

8. The identification of the following for C-TERC consideration for referral to the Community Council:

a. An evaluation of resources necessary to develop, implement and exercise the emergency response plan in its EPD.

b. Projections regarding additional resources necessary in future years for the effective implementation of the provisions of this Ordinance; and

c. Suggested means for providing such additional resources.

E. The Department shall provide administrative support for LEPCs established by the C-TERC.

7.302. FACILITY AND LEPC CHEMICAL EMERGENCY RESPONSE PLANNING

- A. A facility is subject to the requirements of this Section if a hazardous chemical is present at the facility in an amount at or above a designated threshold planning quantity or listed reportable quantity, whichever is less. Designation of threshold planning quantities shall be as determined by the Director or the Administrator pursuant to Section 302 of EPCRA; or Section 112 (r) of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended, and rules promulgated under those laws. Reportable Quantities shall be as listed in 40 C.F.R. Part 302.
1. The EPA's "List of Lists," or its successor to the extent possible, shall serve as a consolidated single reference to assist facility personnel and administrators in determining chemical emergency planning, emergency release notification and routine reporting requirements. If a hazardous chemical is not listed in the "List of Lists," with an assigned threshold planning or reportable quantity, it shall not be subject to chemical emergency planning requirements under this Section.
 2. For purposes of reporting under sections 7.401 and 7.402 of this ordinance, a hazardous chemical shall be reported at the lesser of its listed threshold planning quantity, reportable quantity or shall be reported at the following levels:
 - a. Solids: 500 pounds
 - b. Gas: 200 cubic feet
 - c. Liquid: 55 gallons
 - d. Level Two or Three Aerosol Products: 2500 pounds
 - e. Explosives (unless assigned a lower quantity): 100 pounds
 - f. For purposes of reporting propane, residential users shall be exempt up to 500 gallons.
 3. For purposes of chemical emergency planning and reporting under this section and sections 7.401 and 7.402 of this Ordinance, the total amount of the hazardous chemical subject to planning and/or reporting shall be determined based on chemicals present at the facility at any one time at concentrations at or above one per-cent, or if a carcinogen, at or above one-tenth of one-percent, regardless of location, number of containers, or method of storage.
 4. In determining thresholds, the owner/operator shall aggregate the amount of a hazardous chemical at the facility.

- B. For purposes of chemical emergency planning, the C-TERC may, in its discretion, designate additional facilities as subject to this ordinance, provided such designation includes:
1. Notification to the facility of the proposed designation.
 2. Prior public notice in a newspaper of general circulation within the Community for a period of at least thirty (30) calendar days; and
 3. A provision for public comment to the C-TERC for a period of at least thirty (30) calendar days after which the C-TERC shall consider the statements submitted in such public comment period.
- C. The owner or operator of a facility shall notify the C-TERC in writing that it is subject to the provisions of this section within sixty (60) calendar days of enactment of this ordinance and, thereafter not later than sixty (60) calendar days before introducing to the facility a hazardous chemical at or above the applicable threshold as designated in Section 7.302. A of this Ordinance. The owner/operator of a facility shall:
1. Promptly provide the information necessary for the development and implementation of a chemical emergency response plan when requested by the fire department LEPC or C-TERC; and
 2. Observe the general duty to inform the Fire Department, appropriate LEPC and the C-TERC of any substantive changes at the facility regarding the use, storage and /or handling of hazardous chemicals in accordance with section 7.401.E. This includes, but is not be limited to: introduction of a new chemical at/above its planning and/or reporting threshold; changes in the facility emergency response plan that could impact off-site response/coordination; changes in chemical process and or facility protective measures that have previously been coordinated with environmental and or response personnel.
 3. A facility owner or operator who is subject to chemical emergency response planning requirements but is otherwise exempt from Section 7.401 and 7.402 of this ordinance shall provide Tier Two chemical inventory information as part of their facility chemical emergency response plan. The facility owner or operator may elect to use the Tier Two form for this purpose or may furnish the information in a letter. Information provided shall include:
 - a. Facility name, address, street, city, county, state, zip code;
 - b. Standard Industrial Classification (SIC) Code (or its successor), Dun and Bradstreet Number;
 - c. Owner/Operator name, phone and mail address;

d. Chemical name, chemical abstract service (CAS) number and whether the chemical is an extremely hazardous substance;

e. Physical and health hazards of the chemical [fire, sudden release of pressure, reactivity, immediate (acute) health, and/or delayed (chronic) health];

f. The maximum amount of the chemical on site at any one time in pounds, using Tier Two coding;

g. The container type, pressure and temperature using Tier Two coding;

h. Chemical storage locations and a specific written request to the Fire Department, LEPC and C-TERC if storage information is to be kept from the public domain.

D. The C-TERC shall transmit to the Administrator a list of facilities subject to the provisions of this ordinance annually on a date designated by the Director.

E. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than sixty (60) calendar days before introducing to the facility a hazardous chemical at or above the amounts designated in section 7.302.A above, the owner or operator of a facility subject to this ordinance shall identify to the Fire Department, LEPC and C-TERC a facility emergency coordinator who will:

1. Provide the facility chemical emergency response plan required pursuant to subsection F, below;

2. Participate in all emergency planning processes and activities required pursuant to this ordinance; and

3. Serve as an on-going liaison between the Fire Department, LEPC, C-TERC, and the facility.

F. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than thirty (30) calendar days before introducing to the facility a hazardous chemical at or above the amounts designated in section 7.302.A, the owner or operator of a facility shall submit to the LEPC a facility chemical emergency response plan that meets the following requirements:

(A) Facility chemical emergency response plans shall clearly state the specific actions that will be taken in the event of an imminent or accidental reportable quantity release in order to safeguard the public health, safety, welfare and the environment.

(B) In addition to facility name, physical and mailing address and the facility's latitude and longitude coordinates, a facility chemical emergency response plan shall include:

1. Names, addresses and emergency telephone numbers of a facility emergency coordinator and alternate;

2. A description of emergency warning systems and a list of emergency units, emergency personnel and health professionals in close proximity to the facility;

3. A description of appropriate emergency equipment necessary to respond to a release;

4. A description of emergency response procedures including notification procedures and evacuation plans in the event of a release;

5. Identification of transport routes and transportation methods to and from the facility;

6. Provisions for at least an annual review of the plan and provisions to demonstrate the capability to execute the plan on the request of the C-TERC; and

7. A Hazards Analysis.

G. Facility owners/operators who are required to prepare Hazardous Materials Management Plans, Risk Management Plans, Spill Prevention Control and Countermeasures Plans and/or Resource Conservation and Recovery Act Plans may use those plans to meet the requirements of this ordinance provided it meets the requirements of this ordinance. Each facility owner/operator is encouraged to follow the National Response Teams's Integrated Contingency Plan Guidance as noticed in the *Federal Register* June 5, 1996, FR 28642-28664 or any subsequent update to the Contingency Plan Guidance noticed in the *Federal Register*.

H. In preparing facility chemical emergency response plans pursuant to this Section, the facility emergency coordinator shall consult with the Fire Department, LEPC and other emergency and health professionals to assure maximum coordination of services as may be required in the event of a reportable hazardous chemical release.

I. The owner or operator of a facility subject to this Section shall submit copies of the facility chemical emergency response plan to:

1. The Fire Department,

2. The respective LEPC; and
 3. The C-TERC
- J. In the event the C-TERC has established a single LEPC for the Reservation, a facility emergency plan, Tier Two, and other documents which would normally be provided to the C-TERC, LEPC and Fire Department shall be provided to the C-TERC and Fire Department.
- K. Each LEPC, or the C-TERC if there is one EPD, shall prepare a chemical emergency response plan for its respective EPD not later than eighteen (18) months after the enactment of this ordinance. Such LEPC plans will be based on information provided in the facility chemical emergency response plans submitted under this Section.
- L. Each LEPC shall review its chemical emergency response plan annually and update the plan as required to reflect changes that have occurred within the EPD.
- M. The C-TERC shall review each chemical emergency response plan submitted by the LEPC(s) and make recommendations regarding revisions necessary to ensure that the plan meets the requirements of this ordinance and any rules, policies, procedures, and/or guidelines adopted hereunder. The C-TERC shall:
1. Attempt to review each chemical emergency response plan within a sixty (60) calendar day period and provide comments or recommendations for modifications within that period.
 2. Establish a period of time, not normally to exceed sixty (60) calendar days, within which an LEPC may resubmit a plan returned with comments and recommendations for modification. The C-TERC, on its own initiative, may assign the highest priority to those plans which include the geographic areas having the largest number of facilities that pose the greatest risk to the public health, safety, welfare and/or the environment.
 3. Conduct a joint review with the Advisory Board and other planning and response personnel/entities if the C-TERC is also functioning as the Community LEPC.
- N. The C-TERC may consult with regional response teams established pursuant to the National Contingency Plan as established under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, (CERCLA), regarding a chemical emergency response plan, provided such consultation will not delay implementation of such plan.

- O. Upon written request from a facility owner and the Director's recommendation, the C-TERC may adjust minimum threshold planning and minimum reporting thresholds for a specific chemical and or facility, providing such adjustment does not raise the threshold above federally established minimums.

7.303. EMERGENCY NOTIFICATION

- A. If a reportable quantity release of an extremely hazardous substance or hazardous substance occurs at a facility at which a hazardous chemical is produced, used or stored, the responsible party, (or in the absence of the responsible party, the responding agency), shall immediately verbally notify:
 - 1. The Fire Department;
 - 2. The LEPC Coordinator for any EPD likely to be affected by the reportable release to include any State of Arizona LEPC that may be impacted by an off-site and/or potential off-site release;
 - 3. The C-TERC, through its Chairperson or the Department, who shall immediately contact the emergency response unit of the Department; and the Arizona State Emergency Response Commission (ASERC), if the release is or is anticipated to be off- Reservation;
 - 4. The National Response Center; and
 - 5. Any other official or party designated by rule of the C-TERC to include the Arizona Department of Environmental Quality and Arizona Department of Public Safety.
- B. Verbal notification shall occur immediately after the facility emergency coordinator or designee has knowledge of the reportable quantity release the notice of the reportable quantity release shall include the following:
 - 1. The chemical name or identity of any substance involved in the release;
 - 2. The specific location of the release;
 - 3. An indication of whether the substance is an extremely hazardous substance;
 - 4. An estimate of the quantity of substances released into the environment;
 - 5. The time and duration of the release;
 - 6. The medium or media into which the release occurred;

7. Any known or anticipated acute or chronic health risks associated with the release and, advice regarding medical attention necessary for exposed individuals, if within the informant's knowledge;
 8. Proper precautions to be taken in response to the release, including evacuation and other proposed response actions; and
 9. The name and telephone number of the person or persons to be contacted for further information.
- C. After a release occurs but not later than fifteen (15) days, the owner or operator of a facility where the release occurred shall submit to the LEPC(s) and the C-TERC(s) a written follow-up report stating and updating the information originally provided which shall include the following additional information:
1. Actions taken to respond to and contain the release;
 2. Any known or anticipated acute or chronic health risks associated with the release;
 3. If appropriate, advice regarding medical attention necessary for exposed individuals; and
 4. Measures which have been or will be taken at the facility to avoid a reoccurrence of similar releases.
- D. The owner or operator of a facility that has made a follow-up report pursuant to subsection 7.303 C., above, shall update the notice in writing within seven (7) calendar days from the day on which additional information first becomes known.
- E. An owner or operator of a facility from which a transportation-related release occurs shall meet the reporting requirements of subsection B of this Section if he or she reports information required by such subsection to the 9-1-1 operator, or, in the absence of a 9-1-1 emergency telephone number, to the operator, provided:
1. The Release occurs during transportation or storage incident to transportation; and
 2. The stored substance is moving under active shipping papers and has not reached its ultimate consignee.

**Part 400—COMMUNITY ACCESS TO INFORMATION SUBJECT TO THIS
ORDINANCE**

7.400. PUBLIC ACCESS AND INFORMATION

- A. Information collected under this ordinance is obtained to allow government, business and industry, academia and community members on the Reservation to have access to information regarding storage and release of hazardous chemicals on the Reservation. This information is used to improve prevention, preparedness, response, research and mitigation efforts on an individual as well as a Community basis.
- B. In addition to limitations stated in any section of this ordinance, information provided by EPCRA shall govern the release of information to the public pursuant to this ordinance and are incorporated herein by reference.
- C. Emergency Response Plans, Material Safety Data Sheets, Tier II Inventory Forms, Chemical Release Forms and follow-up emergency reports obtained pursuant to this ordinance shall be available to the public at locations and times established by the C-TERC. Confidential storage information shall not be released to the public.
- D. Requests for information hereunder shall be made either to the appropriate LEPC or the C-TERC.

7.401. MATERIAL SAFETY DATA SHEETS (MSDS)

- A. The owner or operator of a facility who is required to prepare or have available an MSDS for hazardous chemicals under the Occupational Safety and Health Act (OSHA) or under an enactment of the Community Council, shall be subject to the requirements of this Section.
- B. Within sixty (60) calendar days of the enactment of this ordinance and, thereafter not later than thirty (30) calendar days before introducing a hazardous chemical at or above the amounts designated in section 7.302 A., the owner or operator of a facility shall submit:
 - 1. A list of Hazardous Chemicals for which the MSDS is required. A list of Hazardous Chemicals submitted pursuant hereto shall include:
 - a. Chemical or common name;
 - b. CAS number; and
 - c. Hazardous chemical component(s). If more than one hazardous chemical component is in the mixture to be reported, the facility owner or operator shall submit the MSDS for that mixture.

- d. Categorization of the hazardous chemical or hazardous chemical mixture using the hazard categories defined by the Director in accordance with federal guidelines (40 C.F.R. § 370.2) including the following categories: fire, sudden release of pressure, reactivity, immediate (acute) health, and/or delayed (chronic) health.
 2. Calculations for hazardous chemical mixtures and aggregation of extremely hazardous substances shall be prepared in accordance with the requirements established by federal law published at 40 C.F.R. § 370.28. Additionally, aggregation shall be required for all hazardous chemicals at a facility.
 3. Thresholds for reporting under this section are as specified in section 7.302 A. of this ordinance.
 4. Upon written request from a facility owner and the Director's recommendation, the C-TERC may adjust minimum threshold planning and minimum reporting thresholds for a specific chemical and or facility, providing such adjustment does not raise the threshold above federally established minimums.
- C. The MSDS or list of Hazardous Chemical submitted pursuant to this Section shall indicate whether the owner or operator elects to withhold disclosure of information regarding a substance on grounds of Trade Secret protection as applicable under federal law.
- D. The MSDS or list of Hazardous Chemicals required hereunder shall be submitted to:
 1. The Fire Department.
 2. The appropriate LEPC; and
 3. The C-TERC.
- E. An owner/operator of a facility who discovers new information concerning a hazardous chemical for which he or she is required to maintain an MSDS and/or receives delivery of a hazardous chemical not previously reported pursuant to the reporting requirements of this section shall immediately verbally notify the Fire Department, LEPC and C-TERC of such discovery. Follow-up written notification to the Fire Department, LEPC and C-TERC shall be within seven (7) calendar days of such discovery. Every effort will be made by facility owners and operators to obtain information about hazardous chemicals that are to be located at their facility before the chemical is accepted into facility inventory.

- F. Within thirty (30) calendar days following the date on which a written request for an MSDS concerning a hazardous chemical at a specific facility is received from any person, and abiding by trade secret and confidential storage information provisions and regulations adopted pursuant to EPCRA, the LEPC or the C-TERC shall make that MSDS available to the requestor. In the event that the LEPC and/or the C-TERC does not have the requested MSDS, the LEPC or the C-TERC shall request the MSDS from the facility owner or operator.
- G. The owner or operator of a facility that has not submitted an MSDS for a hazardous chemical in compliance with this Section shall submit the MSDS within thirty (30) calendar days of the date of a request for that MSDS by the Fire Department, LEPC, or C-TERC.
- H. A facility owner or operator may meet the list requirements of this section by submitting a *Tier Two Emergency and Hazardous Chemical Inventory* form as either an initial submission or as an update to a previous submission, providing the owner or operator submits MSDS' for mixtures containing more than one hazardous chemical component.
- I. In the event the C-TERC establishes one LEPC for the Community, submission of MSDS and/or list information shall be provided to the C-TERC and the Fire Department.

7.402. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

- A. The owner or operator of a facility required to prepare or have available an MSDS or a list of Hazardous Chemicals shall annually submit a *Tier Two Emergency and Hazardous Chemical Inventory form* reporting hazardous chemicals that were present at their facility during the preceding *calendar* year to:
 - 1. The Fire Department.
 - 2. The appropriate LEPC.
 - 3. The C-TERC
- B. The Tier Two inventory form required under this Section shall be:
 - 1. Submitted within sixty (60) calendar days of the enactment of this ordinance and thereafter on or before the first day of March of each year in the format prescribed by 40 C.F.R. Part 370 or as approved by the C-TERC;
 - 2. Comply with the reporting requirements at Section 7.302 of this Ordinance. Minimum reporting thresholds will be as prescribed in Section 7.302 A. of this Ordinance;

3. Include the Confidential Location Information Sheet provided in 40 C.F.R. § 370.41, which will be made available upon request to the Director, if the facility owner or operator wishes to maintain confidentiality regarding on-site storage locations.
- C. The Owner or Operator of any facility subject to Tier Two Hazardous Chemical Inventory reporting requirements shall allow on-site inspection by the Fire Department, LEPC, or the C-TERC and shall provide the inspecting agency specific location information on hazardous chemicals present at the facility.
 - D. Upon written request, Tier Two information received by the LEPC or the C-TERC shall be provided to any person requesting such information in accordance with the provisions of Section 7.400 above.
 - E. In the event the C-TERC establishes one LEPC for the Community, submission of MSDS and/or list information shall be provided to the C-TERC and the Fire Department.

7.403. TOXIC CHEMICAL RELEASE FORMS

- A. A Facility shall be subject to the requirements of this Section if it manufactures, processes or otherwise uses a Toxic Chemical:
 1. Pursuant to 40 C.F.R. § 372.22;
 2. In violation of guidance defining threshold levels as published by the Director; or
 3. Is in excess of the threshold amount for such Toxic Chemical established pursuant to 40 C.F.R. § 372.25 or § 372.27.
- B. The Owner or Operator of a Facility subject to this Section shall, on the 1st day of July of each year, or on another date if reporting dates are modified by the Administrator, submit to the Administrator and the C-TERC a Toxic Chemical Release Form (Form R) covering the preceding year. The Toxic Chemical Release Form shall comply in all respects to the requirements of 40 C.F.R. Part 372 and be submitted in the format supplied by the Administrator pursuant to Section 313(g) of EPCRA or by the Director.
- C. The Director may, on the Governor's behalf, petition the Administrator to add a chemical or delete a chemical pursuant to Section 313(c)(2) of EPCRA.
- D. The Director may, on the Governor's behalf, request the Administrator to cause the requirements of this Section to be applicable to any facility that manufactures, processes or otherwise uses a Toxic Chemical listed pursuant to Section 313(c) of EPCRA on the basis that the Administrator determines that such application is warranted because of:

1. The toxicity of the chemical in question;
 2. The proximity of the facility to other facilities that release the Toxic Chemical or to population centers on the Reservation;
 3. The history of releases of the chemical at the facility; and
 4. Such other factors as the Administrator deems appropriate.
- E. Toxic Chemical Release Forms filed pursuant to this Section shall be available to the public subject to the provisions of Section 7.400.
- F. The Director shall annually provide each LEPC with Toxic Chemical Release Inventory information pertinent to that EPD's planning requirements. At a minimum, information will include: facility name, address, latitude and longitude, technical and public points of contact, chemical name and CAS number and maximum amount of the Toxic Chemical on-site at any one time.

Part 500—IMMUNITY FROM CIVIL SUIT

7.500. SOVEREIGN IMMUNITY

Employees of the Community carrying out the enforcement of this ordinance and acting within the scope of their employment shall be immune from civil liability when carrying out the provisions of this ordinance. Such immunity springs from the Sovereign Immunity of the Community extending to all Community governmental entities.

Part 600 - ENFORCEMENT : PENALTIES

7.600 EPCRA : ENFORCEMENT

1. If the director determines that a facility is in violation of any provision of this ordinance, a rule adopted pursuant to this ordinance, or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance immediately or within a specified period of time and may impose a civil penalty of up to \$5,000 per day per violation. Each day of failure to perform any act or duty required by this ordinance may constitute a separate offense.
2. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

3. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.

7.601 CIVIL JUDICIAL PENALTIES

A wilful violation of the compliance order shall subject the non-compliant person or entity violating this ordinance to a civil judicial penalty of up to \$25,000 per day per violation.

PART 700 ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

7.700 ADMINISTRATIVE PROCEDURES

7.700.101 Definitions

- 101.1 “Administrative law judge” means an individual, appointed by the Governor, who sits as an administrative law judge, and conducts administrative hearings for appealable agency administrative actions.
- 101.2 “Administrative law judge decision” means the findings of fact, conclusions of law, and recommended decision issued by an administrative law judge.
- 101.3 “Agency” means the Gila River Department of Environmental Quality.
- 101.4 “Appealable Agency Action” means an action that is subject to administrative appeal pursuant to § 7.700.102 of this ordinance.
- 101.5 “Final Administrative decision” means a decision by the Gila River Department of Environmental Quality that is subject to review by the Gila River Tribal Court pursuant to § 7.700.200 of this ordinance.

7.700.102 Appeal of an Agency Action

This section applies to all Appealable Agency Actions including but not limited to:

- a. An Agency compliance order; or
- b. Civil penalties for violating the ordinance or for violating the compliance order

7.700.103 Notice of Appealable Agency Action: Hearing

- 103.1 At the time an action is taken that is appealable under section 700.102, the Gila River Department of Environmental Quality shall serve notice of the action pursuant to subsection 700.104.1. The notice shall identify the ordinance or rule 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.
- 103.2 A party may obtain a hearing on an Appealable Agency Action by filing a notice of appeal with the Department of Environmental Quality within thirty (30) days after receiving the notice prescribed in 700.103.1 of this section. The notice may be filed by a party who contends its legal rights, duties, privileges are an appealable agency action.
- 103.3 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 of Environmental Quality shall notify the Governor of the appeal and the Governor shall schedule a hearing pursuant to sections 700.105 and 700.106.
- 103.4 If good cause is shown, the Director of Environmental Quality may accept an appeal that is not filed in a timely manner.

7.700.104 Service

- 104.1 Every notice or decision shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to every party to the action to the party's last address of record with the Department of Environmental Quality.
- 104.2 Each party shall inform the Department of Environmental Quality and if applicable, the administrative law judge of any change of address within five (5) days of the change.

7.700.105 Request for Hearing

- 105.1 The Director of the Department of Environmental Quality shall notify the Governor's office of the appeal within five (5) business days.
- 105.2 The Department of Environmental Quality shall provide the following information to the Governor's Office:
- a. Caption of the matter, including the names of the parties.

- b. The date the party appealed the agency 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.
- g. Information regarding the nature of the proceeding, including the specific allegation.

7.700.106 Assignment of Administrative Law Judge: Setting the Hearing

Within fifteen (15) working days of the Governor’s receipt of a request for a hearing, the Governor shall provide, in writing, to the Department of Environmental Quality:

- a. The name of the administrative law judge assigned to hear the matter.
- b. The date, time, and location of the hearing.

7.700.107 Scheduling of Hearing

- 107.1 Except as provided in section 700.107.2, hearings for appealable agency actions shall be held within sixty (60) days after the notice of appeal is filed.
- 107.2 The date scheduled for the hearing may be advanced or delayed upon the agreement of the parties or on a showing of good cause.
- 107.3 The Administrative Law Judge shall prepare and serve a notice of hearing on all parties to the appeal at least thirty (30) days before the hearing. The notice shall include:
 - a. A statement of the time, place, and nature of the hearing.
 - b. A statement of legal authority and jurisdiction under which the hearing is to be held.
 - c. A reference to the particular sections of the ordinance involved.
 - d. A short and plain statement of the matters asserted.
- 107.4 Notwithstanding section 700.107.3, 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.

7.700.108 Pre-Hearing Conference

- 108.1 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 to:
- a. Clarify or limit procedural, legal, or factual issues.
 - b. Consider amendments to any pleadings.
 - c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
 - d. Obtain stipulations or rulings regarding testimony, exhibits, facts, or law.
 - e. Schedule deadlines, hearing dates, and locations if not previously set.
 - f. Allow the parties the opportunity to discuss settlement.
- 108.2 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.
- 108.3 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.

7.700.109 Hearing

- 109.1 The parties to an appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.
- 109.2 The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and enforced in a manner provided by the Gila River Community Code of Law and Order for the service and enforcement of subpoenas in civil matters.
- 109.3 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.

- 109.4 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 of Environmental Quality's expense. Any party requesting a transcript shall pay the costs of the transcript.
- 109.5 Informal disposition may be made by stipulation, agreed settlement, consent order, or default.
- 109.6 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.

7.700.110 Final Administrative Decision: Review

- 110.1 The administrative law judge shall issue a written administrative decision within twenty (20) calendar days after the hearing is concluded. The administrative decision shall include findings of fact and conclusions of law, separately stated, a recommended decision and a concise explanation of the reasons supporting the recommended decision.
- 110.2 The administrative law judge shall serve a copy of the Administrative Law Judge's decision on the Director of the Department of Environmental Quality and the record of the hearing.
- 110.3 Within thirty (30) days after the date the administrative law judge sends a copy of the recommended decision to the Director, the Director may review the decision and accept, reject or modify it. The Director shall be bound by the Administrative Law Judge's findings of fact unless it is clearly erroneous but may make an independent determination of issues of law or policy.
- a. If the Director declines to review the administrative law judge's decision or accepts the decision, the Department of Environmental Quality shall serve the decision on all parties.
 - b. Prior to rejecting or modifying the decision, the Director shall consult with and obtain the consent of the Governor. The Director shall thereafter serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth reasons for the rejection or modification.

110.4 The Director’s final decision shall state separately the findings of fact and conclusions of law. If no appeal is taken within thirty-five (35) calendar days, the decision shall become final.

110.5 A party may appeal a final administrative decision pursuant to Section 700.200.

7.700.200 JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS

7.700.201 Definitions

201.1 “Final Administrative Decision” means any decision, order or determination by the Director of the Department of Environmental Quality rendered in a case subject to an administrative appeal pursuant to section 700.202.1.

201.2 “Trial Court” means the Gila River Tribal Court.

201.3 “Trial De Novo” means a new trial in Gila River Tribal Court rather than a hearing on the administrative record without any new or additional evidence in support of or in opposition to a finding, order, or decision of the Department of Environmental Quality.

7.700.202 Scope

202.1 This Rule applies to and governs every action to review judicially a Final Administrative Decision of the Department of Environmental Quality.

202.2 Unless review is sought of an administrative decision within the time and in the manner provided in section 700.200, the parties to the proceeding shall be barred from obtaining judicial review of such decision.

7.700.203 Commencement of Action

An action to review a final administrative decision shall be commenced by filing a complaint within thirty five (35) days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The decision shall be deemed to have been served when personally delivered or mailed by registered mail to the party affected at the last known residence or place of business.

7.700.204 Jurisdiction

Jurisdiction to review Final Administrative Decisions is vested in the Gila River Tribal Court.

7.700.205 Service of Process

In an action to review a decision of the Department of Environmental Quality, a copy of the summons and complaint shall be served as in civil actions and as provided by the Gila River Community Code of Law and Order, upon the Office of the Department of Environmental Quality.

7.700.206 Appearance of Defendants

Within twenty (20) days after service of the summons and complaint, the Department of Environmental Quality shall answer the complaint.

7.700.207 Pleadings and Record on Review

207.1 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 which shall be filed by the Department of Environmental Quality as part of the record on review.

207.2 Except as otherwise provided, the Department of Environmental Quality 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 of Environmental Quality may also contain other portions of the record as the Department of Environmental Quality deems relevant. By order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.

207.3 If, as a result of judicial review, the cause is remanded to the Department of Environmental Quality and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all parties, shall constitute the record on review.

7.700.208 Scope of Review

208.1 An action to review a Final Administrative Decision shall be heard and determined within a reasonable time. The hearing and determination shall be extended to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to a finding, order, or decision of the Department of Environmental Quality shall be heard by the court, except in the event of a trial de novo or in cases where in the discretion of the court, justice demands the admission of such evidence.

- 208.2 The trial shall be de novo if trial de novo is demanded in the complaint or answer and if no hearing was held by an administrative law judge or the proceedings before the administrative law judge were not stenographically reported or mechanically recorded so that a transcript might be made.
- 208.3 A party who has demanded a trial de novo in the complaint or answer pursuant to subsection 7.700.208.2 shall file prior to the time for filing the opening appellate brief, a motion explaining the need for a trial de novo with citation to legal authority supporting the demand. Any party opposing the motion may file a response thereto.
- 208.4 The Gila River Tribal Court may not reverse the Director's finding of fact unless it is clearly erroneous and may not reverse the Director's Final Administrative Decision unless it has no substantial evidentiary basis in the record or is erroneous as a matter of law.

7.700.209 Authority of the Gila River Tribal Court

- 209.1 The Gila River Tribal Court may:
- a. With or without bond, unless required by ordinance under authority of which the administrative decision was entered, and before or after answer, stay the decision in whole or in part pending final disposition of the case, after notice to the Department of Environmental Quality 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 of Environmental Quality.
 - c. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
 - d. Dismiss parties or realign parties plaintiff and defendant.
 - e. Modify, affirm, or reverse the decision in whole or in part.
 - f. Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
 - g. When a hearing has been held by the administrative law judge, remand for the purpose of taking additional evidence when from the state of the record or otherwise it appears that such action is just.
 - h. In the case of affirmance or partial affirmance of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, upon which execution may issue.

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

209.3 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.

7.700.210 Costs

210.1 Costs may be awarded to the Department of Environmental Quality if the Department of Environmental Quality is the prevailing party in the review.

210.2 Such costs, may be awarded in an amount deemed to be reasonable by the trial court, based upon the expense the Department of Environmental Quality has reasonably incurred in preparing the record of the proceedings before trial and participating in the review process.

7.700.211 Appellate review

The final decision, order, judgment, or decree of the Gila River Tribal Court entered for an action to review a decision of the Department of Environmental Quality may be appealed to the Gila River Tribal Court of Appeals.

7.700.212 Rule of Civil Procedure

Where applicable, all rules of civil procedure in the Gila River Tribal Court, including rules relating to appeals to the Gila River Tribal Court of Appeals, shall apply to all proceedings.

Part 800—APPROPRIATION AND CONTRIBUTIONS

7.800. APPROPRIATION

The C-TERC, through the Department, shall annually propose a program budget to the Community Council in order to provide for the implementation and enforcement of this ordinance.