

Yavapai-Apache Nation Environmental Code
Enacted on September 12th, 2019 by Resolution No. 166-19

[Table of Contents](#)

| | |
|---|------------------------------|
| Yavapai-Apache Nation Environmental Code | i |
| Final Clean Draft | Error! Bookmark not defined. |
| August 2019 | Error! Bookmark not defined. |
| Title I – General Provisions | 1 |
| Article I: Introduction | 1 |
| 1.01 – Authority | 1 |
| 1.02 – Findings | 1 |
| 1.03 – Purpose | 3 |
| 1.04 – Scope | 4 |
| 1.05 – Effective Date | 5 |
| 1.06 – Sovereign Immunity..... | 5 |
| Article II: Delegated Authority | 5 |
| 2.01 – General Powers and Duties of the Environmental Department | 5 |
| 2.02 – General Powers and Duties of the Attorney General Office | 6 |
| 2.03 – Hearings..... | 6 |
| 2.04 – Enforcement..... | 6 |
| 2.05 – Financial and Technical Assistance | 6 |
| 2.06 – Investigations | 6 |
| Article III: Environmental Code Enforcement Fund | 7 |
| 3.01 – Establishment..... | 7 |
| 3.02 – Financial Management | 7 |
| 3.03 – Administration and Expenditures | 7 |
| Article IV: Definitions of General Applicability | 8 |
| Article V: Indemnification and Proof of Insurance | 9 |
| 5.01 – Indemnification | 9 |
| 5.02 – Proof of Insurance | 9 |
| Article VI: Severance | 10 |
| Title II – Permit and License Procedure | 11 |
| Article I: Definitions | 11 |
| Article II: Directives | 11 |
| 2.01 – Publicly Available Forms and Applications..... | 11 |
| 2.02 – Fees | 11 |
| 2.03 – Validation | 11 |
| 2.04 – Permit and License Conditions | 12 |
| 2.05 – Denial or Revocation | 12 |
| Article III: Procedure to Obtain a Permit Other than a Burn Permit | 13 |
| 3.01 – Scope | 13 |
| 3.02 – Procedure | 13 |
| 3.03 – Process Where Additional or Supplemental Information Required..... | 13 |

| | |
|---|-----------|
| 3.04 – Duration | 14 |
| Article IV: Procedure to Obtain a Burn Permit | 14 |
| 4.01 – Scope | 14 |
| 4.02 – Procedure | 14 |
| 4.03 – Notification to Local Fire Districts..... | 14 |
| 4.04 – Duration | 15 |
| Article V: Procedure to Obtain a Fishing or Camping License | 15 |
| 5.01 – Scope | 15 |
| 5.02 – Procedure | 15 |
| 5.03 – Duration | 15 |
| Title III – Environmental Review..... | 16 |
| Article I: Definitions | 16 |
| Article II: Directives | 18 |
| 2.01 – Actions Subject to Environmental Review | 18 |
| 2.02 – Exemptions..... | 18 |
| 2.03 – Cost of Documentation for Developments Proposed by Applicants other than the Nation.. | 18 |
| 2.04 – Environmental Review Forms | 19 |
| 2.05 – Utilization of Non-Tribal Environmental Review Mechanisms..... | 19 |
| 2.06 – Procedure for Environmental Department Determinations for Developments Proposed by Applicants other than the Nation..... | 19 |
| 2.07 – Tribal Council Review and Approval of Development for Developments Proposed by Persons other than the Nation | 19 |
| Article III: Procedure for Environmental Review of Development Proposed by the Nation..... | 20 |
| 3.01 – Due Diligence..... | 20 |
| 3.02 – Written Report, Recommendation, and Presentation to Tribal Council | 20 |
| Article IV: Procedure for Environmental Review of Development Proposed by Applicants Other than the Nation | 20 |
| 4.01 – Initial Screening | 20 |
| 4.02 – Environmental Checklist and Environmental Department Review | 21 |
| 4.03 – Determination by the Environmental Department..... | 21 |
| 4.04 – Duration of an Environmental Department Determination..... | 22 |
| Title IV – Public Nuisance | 24 |
| Article I: Definitions | 24 |
| Article II: Delegation of Responsibilities..... | 25 |
| 2.01 – Powers and Duties of the Attorney General | 25 |
| 2.02 – Powers and Duties of the Environmental Department..... | 25 |
| 2.03 – Powers of Duties of the Housing Department | 25 |
| Article III: Directives..... | 25 |
| 3.01 – Complaints..... | 25 |
| 3.02 – Investigations | 26 |
| 3.03 – Recommendation | 26 |
| Article IV: Prohibitions and Liability..... | 26 |
| 4.01 – Prohibition on Public Nuisances | 26 |
| 4.02 – Prohibitions Specific to Vehicles | 26 |
| 4.03 – Successive Liability..... | 27 |
| Article V: Abatement and Cost Recovery..... | 27 |
| 5.01 – Abatement for Uncontested Notice of Violations | 27 |

| | |
|--|-----------|
| 5.02 – Abatement Following a Hearing and Judgment in Tribal Court | 27 |
| 5.03 – Abatement in the Case of Public Nuisance Caused by Vehicles..... | 27 |
| 5.04 – Cost Recovery | 28 |
| Title V – Waste Management..... | 29 |
| Article I: Definitions | 29 |
| Article II: Directives..... | 31 |
| 2.01 – Commercial Collection of Solid Waste..... | 31 |
| 2.02 – Collection of Hazardous Waste..... | 31 |
| 2.03 – Commercial Recycling..... | 32 |
| 2.04 – Illegal Dumping..... | 32 |
| 2.05 – Waste Collection Outreach and Education | 32 |
| 2.06 – Transfer Stations Owned and Operated by Persons Other than the Nation..... | 33 |
| 2.07 – Transfer Stations Owned and Operated by the Nation..... | 34 |
| 2.08 – Underground Storage Tanks..... | 35 |
| 2.09 – Waste Tire Collection, Handling, and Storage | 35 |
| Article III: Prohibitions | 36 |
| 3.01 – Collection..... | 36 |
| 3.02 – Commercial Recycling..... | 36 |
| 3.03 – Open Dumping | 36 |
| 3.04 – Open Burning..... | 37 |
| 3.05 – Hazardous Waste..... | 37 |
| 3.06 – Importing waste | 37 |
| 3.07 – Improper Storage of Waste | 37 |
| 3.08 – Transportation of Waste | 38 |
| 3.09 – Biosolids | 38 |
| 3.10 – Landfills | 38 |
| 3.11 – Underground Storage Tanks..... | 38 |
| 3.12 – Waste Tire Prohibition..... | 39 |
| 3.13 – Transfer Stations | 39 |
| 3.14 – Defacement | 39 |
| Article IV: Strict Liability for Corrective Action and Cost Recovery Actions Related to the Release of Solid Waste, Oil, or Hazardous Substances into the Nation’s Environment..... | 39 |
| 4.01 – Strict Liability..... | 39 |
| 4.02 – Exemptions..... | 40 |
| 4.03 – Clean-up Standards | 40 |
| Title VI – Pesticide & Toxic Chemicals..... | 41 |
| Article I: Definitions | 41 |
| Article II: Adoption by Reference..... | 42 |
| 2.01 – FIFRA..... | 43 |
| 2.02 – ITCA Agreement..... | 43 |
| 2.03 – Worker Protection Standard..... | 43 |
| 2.04 – Toxics Release Inventory | 43 |
| Article III – Pesticides and Toxic Chemical Control Officer..... | 43 |
| 3.01 – Pesticides and Toxic Chemical Control Officer..... | 43 |
| Article IV: Pesticide Permits and Certifications..... | 45 |
| 4.01 – Federal Pesticide Applicator Certification | 45 |
| 4.02 – Non-Restricted Use Pesticide Permit..... | 45 |

| | |
|--|-----------|
| Article V – Toxic Chemicals | 46 |
| 5.01 – EPCRA Section 313 Facilities..... | 46 |
| 5.02 – Proposing Additions of EPCRA 313 Facilities..... | 46 |
| Article VI – Directives | 47 |
| 6.01 – Safeguarding Against Adverse Effects of Pesticides and Toxic Chemicals..... | 47 |
| 6.02 – Farm Worker Safety..... | 47 |
| 6.03 – Notice and Records..... | 48 |
| 6.04 – Spills | 49 |
| Article VII: Prohibitions | 49 |
| 7.01 – Application of Pesticides and Toxic Chemicals..... | 50 |
| 7.02 – Drift, Aerial Application, and Worker Exposure..... | 50 |
| 7.03 – Storage and Transport..... | 51 |
| 7.04 – Defacement..... | 52 |
| Title VII – Air Quality | 52 |
| Article I: Definitions | 52 |
| Article II: Directives | 54 |
| 2.01 – Monitoring Program | 54 |
| Article III: Burning on the Reservation | 55 |
| 3.01 – Burn Permits..... | 55 |
| 3.02 – Exemptions to Burn Permit Requirements | 55 |
| 3.03 – Open Burning Notification, Attendance, and Inspection | 56 |
| 3.04 – Burn Bans | 56 |
| Article IV: Prohibitions | 57 |
| 4.01 – General Prohibition on Open Burning | 57 |
| 4.02 – Prohibited Materials..... | 57 |
| 4.03 – Burning During Burn Bans..... | 58 |
| 4.04 – Defacement | 58 |
| 4.05 – Attendance | 58 |
| 4.06 – Extinguishment..... | 58 |
| Title VIII – Natural Resources | 59 |
| Article I: Definitions | 59 |
| Article II: Directives | 60 |
| 2.01 – Species Management | 60 |
| 2.02 – Riparian Corridor Management..... | 60 |
| 2.03 – Hunting, Fishing, and Overnight Use Zones..... | 62 |
| Article III: Permit System | 62 |
| 3.01 – Hunting, fishing, camping, and gathering by members. | 62 |
| 3.02 – Non-Member Hunting | 62 |
| 3.03 – Non-Member Fishing Permits..... | 62 |
| 3.04 – Camping and Overnight Use Permits..... | 62 |
| Article IV: Prohibitions | 63 |
| 4.01 – Permits | 63 |
| 4.02 – Intoxication..... | 63 |
| 4.03 – Illegal Take and Prohibited Practices..... | 63 |
| 4.04 – Use of Firearms Outside of Hunting Zones | 63 |
| 4.05 – Exotic or Nonnative Species Introduction..... | 64 |
| 4.06 – Off-Road Vehicle Use..... | 64 |

| | |
|--|-----------|
| 4.07 – Defacement | 64 |
| Title IX - RESERVED | 65 |
| Title X – Environmental Code Enforcement | 65 |
| Article I: Civil Enforcement for Persons other than the Yavapai-Apache Nation..... | 65 |
| 1.1 – Enforcement Policy..... | 65 |
| 1.02 – Exhaustion | 65 |
| 1.03 – Warning..... | 65 |
| 1.04 – Notice of Violation..... | 65 |
| 1.05 – Opportunity to Cure | 66 |
| 1.06 – Additional Opportunities to Cure | 67 |
| 1.07 – Emergency Orders | 67 |
| 1.08 – Appeal of Notice of Violation..... | 68 |
| Article II: Administrative Civil Penalties for Persons other than the Nation | 68 |
| 2.01 – Administrative Civil Penalties | 68 |
| Article III: Violations by the Nation | 69 |
| 3.01 – Informal Resolution | 69 |
| 3.02 – Hearing to Develop Recommended Corrective Action | 69 |
| Article IV: Tribal Court Jurisdiction..... | 70 |
| 4.01 – Applicability | 70 |
| 4.02 – Procedure for Appeal of Final Nation Decisions | 70 |
| 4.03 – Procedure for Actions brought by the Nation | 72 |
| 4.04 – Procedure for the Actions by the Nation Seeking Issuance of Court Orders or Civil Warrants | 73 |
| 4.05 – Procedure for Actions Seeking Exclusion of Non-Members..... | 73 |

Title I – General Provisions

Article I: Introduction

1.01 – Authority

A. The Yavapai-Apache Nation has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of Nation members and all other persons on the lands within the exterior boundaries of the Nation's Reservation lands as necessary to protect the natural environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation. Under the Constitution of the Yavapai-Apache Nation, the governing authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Council.

B. The Yavapai-Apache Tribal Council enacts and enforces this Environmental Code under its inherent civil legislative, adjudicative, and regulatory authority as a sovereign nation and under authority of the Constitution of the Yavapai-Apache Nation, Article I Jurisdiction, Article V, Subsections (a) to protect the health and welfare of the Nation, (e) to regulate the use of the Nation's lands, (l) to regulate hunting, fishing, trapping, camping, recreation, hiking, and all other related activities on the Reservation, (t) to exclude non-members of the Nation from the Reservation, (u) to exercise civil jurisdiction over all tribal members and non-tribal members to the fullest extent permitted by federal law, and (v) to enact ordinances necessary or incidental to the exercise of the Nation's legislative powers. The Yavapai-Apache Tribal Council enacts this Title to regulate certain activities, as detailed in the Environmental Code Titles III-VIII, within the Reservation to the fullest extent recognized under federal law. The Yavapai-Apache Tribal Council finds that non-members engaged in conduct or activity within the exterior boundaries of the Reservation under a lease agreement, contract, or permit or through other contacts with the Nation have voluntarily and explicitly agreed to the jurisdiction of the Nation and are subject to regulation under the laws, ordinances, and regulations of the Nation. Furthermore, the Yavapai-Apache Tribal Council finds that the activities regulated by this Environmental Code, if left unregulated, pose an imminent threat to the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation.

1.02 – Findings

The Yavapai-Apache Tribal Council finds the following:

A. To the People of the Yavapai-Apache Nation, the Verde River (Tu cho n'Lii) and the environment and natural resources of the Verde Valley are important physical and spiritual anchors to their place in this world. When many of the Yavape' and Dilzhe'e Apache People of the Verde Valley and surrounding mountains were force marched to the concentration camp at San Carlos east of Phoenix in the brutal February weather of 1875 they knew that someday they would return to the Verde Valley and the River that carved it. Today, the animals and their habitat, and the plants, and fish, the air, the lands, and the waters of the Verde Valley are a vital part of the Yavapai-Apache Nation. As the primary food source for the Yavape' and Dilzhe'e Apache People of the Verde Valley for thousands of years, plants, fish, and wildlife continue to be an essential aspect of Yavape' and Dilzhe'e Apache nutritional and spiritual health, and play a vital role in the preservation of the Yavape' and Dilzhe'e Apache traditional, cultural and religious values. The welfare of the Yavapai-Apache Nation, its members, and others residing or working within the reservation is dependent upon the protection, preservation, and sustainable management of the Yavapai-Apache Nation's air, land, water, wildlife, and natural resources.

B. The mistreatment of the Nation's environmental and natural resources threatens to adversely impact the environment, natural resources, public health, safety, welfare, political integrity, and economic security of the Nation in the following ways:

i. Illegal dumping, improper waste management, and uncontrolled disposal of waste within the exterior boundaries of the Reservation may pose a threat to the environment and quality of life of Nation residents. Failure to control these problems may adversely affect the health and welfare of the Nation and its members by contributing to land, water, and air pollution; to the production of flies, rodents and other pests; to the waste of limited and valued natural resources; to the deterioration of the Verde River; and to the general detriment of the natural environment of the Reservation.

ii. Improper use and storage of pesticides and toxic chemicals may threaten the public, health, safety and welfare of the Nation and its members; and may impact the economic welfare of the Yavapai-Apache Nation, its members, and others residing or working within the Reservation.

iii. Air pollutants, whether emitted on the Yavapai-Apache Nation or transported to the Reservation from off-Reservation sources, may adversely affect air quality on the Reservation; the health and wellbeing of the of the Yavapai-Apache Nation, its members, and others residing or working within the Reservation; the economic security of the Nation; and

the traditional way-of-life that the Nation's members have practiced since time immemorial.

iv. The Verde River and the species that depend on it are threatened by erosion, impacts from livestock grazing, tamarisk encroachment, and sedimentation. Flows in the Verde River have substantially declined, channel morphology has changed, and riparian vegetation has become less diverse in structure and species composition. Many riparian species of plants once found within the riparian conservation corridor of the Verde River that are of traditional and cultural value are rarely encountered today. Many of the places where the Yavape' and Dilzhe'e Apache People traditionally gathered cottonwood and willow for baskets or wild spinach for food are no longer present.

v. Unregulated development within the Reservation threatens to harm the health of the Yavapai-Apache Nation, its members, and others residing or working within the Reservation, as well as the Nation's economic stability, land, air, water, and cultural and natural resources.

vi. Public nuisances threaten to create, and threaten to continue to create, unsafe and unhealthy conditions that may harm the economic welfare, attractiveness, and community character of the Reservation and the health of the Yavapai-Apache Nation, its members, and others residing or working within the Reservation.

vii. RESERVED

C. It is in the best interest of the Nation, its members, and all persons residing on the Reservation or otherwise coming within the exterior boundaries of the Reservation and the Nation's jurisdiction to establish and maintain a comprehensive Environmental Code that will address the problems described in Title 1, Article I, §1.02 (B) i-vi; that will protect the health, safety, and welfare of the Nation's members and all others residing on or entering onto the Reservation; and that will preserve the environment and ensure the sustainable management of the Nation's natural resources.

1.03 – Purpose

A. It is the intent and purpose of the Environmental Code to formalize and establish uniform requirements and procedures to safeguard the environment and natural resources of the Reservation in order to protect the public health, safety, and environment of the Reservation from the problems described in Section 1.02 (B) i-vi hereinabove; to protect the health and safety of all the individuals living and working within the Reservation; to protect the fundamental cultural, ceremonial, religious values of the Nation including, but

not limited to, the deep cultural ties between the Nation and a flowing Verde River; and to ensure the cultural, social and economic stability of the Nation. The Environmental Code's provisions shall be liberally construed to facilitate the accomplishments of these purposes.

B. It is the specific intent of the Environmental Code to place the obligation of complying with the Environmental Code's requirements upon the persons regulated by this Environmental Code. No provisions of the Environmental Code shall be construed to create or to form any basis for liability on the part of the Nation or its officers, employees, or agents for any alleged injury of damage arising from the adoption, administration, application, implementation, or enforcement of the Environmental Code.

1.04 – Scope

A. The Environmental Code shall apply to the following:

- i. All persons within the exterior boundaries of the Reservation including, but not limited to the following: all Nation members; all other persons within the exterior boundaries of the Reservation, including any Indian who is a member of a federally recognized Indian tribe and all non-Indians; and all persons as defined in the Environmental Code.
- ii. All existing and proposed activities on places and lands located within the exterior boundaries of the Reservation that impact the Nation's environmental resources, including, but not limited to, the following:
 1. The monitoring of air quality on the Reservation and open burning on the Reservation.
 2. The management of the Verde River Riparian corridor; the protection of the Reservation's natural resources, including the Verde River; and the management of hunting, fishing, and camping on the Reservation.
 3. Illegal dumping; the collection of solid and hazardous waste on the Reservation; and the operation of Underground Storage Tanks.
 4. The use, storage, and application of Pesticides and Toxic Chemicals on the Reservation.
 5. The management and abatement of public nuisances on the Reservation.
 6. Proposals for developments on the Reservation that may have an impact on the Nation's environment or cultural and historical resources.
 7. RESERVED

B. Any person within the exterior boundaries of the Reservation is subject to and must comply with the Environmental Code, any regulations issued

hereunder by the Yavapai-Apache Tribal Council, and all the Nation's laws. All such persons shall be deemed to have consented to the civil jurisdiction of the Nation and its courts and shall be subject to civil prosecution, penalties, damages, and any other civil remedies imposed or assessed or awarded by the Nation and its courts for any violations of this Environmental Code.

1.05 – Effective Date

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

1.06 – Sovereign Immunity

A. Nothing in the Environmental Code, nor any action, inaction, or agreement of the Environmental Department, shall be construed as, or is intended to be, a waiver or modification of the Nation's sovereign immunity, or a consent by the Nation to jurisdiction or suit against it.

B. The Environmental Department is hereby authorized to enter into such contracts as are authorized by the Tribal Council, for the purpose of implementing or enforcing the Environmental Code, provided that any such contracts shall not include provisions waiving the sovereign rights or immunities of the Nation, or any Department, agency, entity, officer, elected official, employee, representative, or agent thereof unless such provisions have been reviewed by the Nation's Attorney General and approved by the Tribal Council upon the Attorney General's recommendation. Any ambiguities in such contracts shall not be construed to be a waiver of the sovereign rights or immunities of the Nation, or any Department, agency, entity, officer, elected official, employee, representative, or agent thereof.

Article II: Delegated Authority

2.01 – General Powers and Duties of the Environmental Department

The Yavapai-Apache Nation Environmental Department shall be the lead agency charged with administering the Environmental Code, which includes implementing and enforcing the Environmental Code pursuant to all powers and duties delegated to it and in partnership with other tribal departments and agencies as it sees fit or as may be required by law and policy of the Nation. The Environmental Department is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity in any court or other tribunal.

2.02 – General Powers and Duties of the Attorney General Office

Where explicitly provided by the Environmental Code, the Attorney General's office may be designated as lead agency for the implementation of such Titles. The Attorney General's Office is designated as the lead agency for the enforcement of this Code in Tribal Court pursuant to Title X. The Attorney General is not authorized to consent to jurisdiction, liability, or waiver of sovereign immunity in any court or other tribunal, except as is authorized by the Tribal Council.

2.03 – Hearings

In administering the Environmental Code, the Environmental Department shall allow public participation and schedule hearings as it deems appropriate. At least five business days prior to the public hearing, public notice shall be posted at the Yavapai-Apache Administration Office and other relevant locations describing the dates, times, and locations of all public hearings held pursuant to this Title. The public notice shall also contain a concise description of the purpose of the hearing. At the hearing the Environmental Department may request public comments regarding the subject of the hearing.

2.04 – Enforcement

The Environmental Department has the power to enforce compliance with the Environmental Code, as specifically set forth in Title X. Enforcement of the Environmental Code, including, but not limited to issuing civil citations for violations of the Environmental Code, may also be undertaken by the Nation's law enforcement officials, the Nation's police department officers, and any agents of the United States Environmental Protection Agency who are specifically authorized by the Tribal Council.

2.05 – Financial and Technical Assistance

The Environmental Department is authorized to apply for Federal and State financial support, technical assistance, and training to implement the Environmental Code. All grant applications shall be filed in accordance with the Nation's grants and contracting policies and procedures as approved by the Council from time to time.

2.06 – Investigations

A. Upon receiving a written or verbal complaint from any person that establishes reasonable grounds, or upon its own initiative, the Department, or any person listed in Title I, Article II, §2.04, may investigate the activities of any person who is suspected of violating any provision of the Code or any permit conditions. The Department may investigate sites of possible pollution and suspected Code violations and take reasonable steps that the Department finds necessary to ensure that permit conditions and the provisions of the Environmental Code are being complied with by any person.

B. The Environmental Department may request that a person disclose or make available for inspection and copying information, documents, or records, if the person has or may have information, documents, or records relevant to the person's compliance with this Code.

C. The Department, after review of the matter by the Nation's Attorney General, may petition the Tribal Court pursuant to Title X, Article IV, §4.04 for an order requiring the person to provide such information, documents, or records related to the suspected violation of this Code or to issue an order authorizing the Department to enter into a person's place of business, operation, or facility and to inspect any books or records of the person that may be related to the suspected violation of this Code.

Article III: Environmental Code Enforcement Fund

3.01 – Establishment

The Environmental Code Enforcement Fund is hereby established

3.02 – Financial Management

All fees and monies collected pursuant to the Environmental Code shall be deposited with the Yavapai-Apache Nation Finance Department, with all spending to be restricted to the Environmental Code Enforcement Fund. The Environmental Department shall submit a written report annually to the Council detailing the sums deposited in the fund, including the sources and uses thereof. Any monies remaining in the fund at the end of the fiscal year shall roll-over to the following fiscal year and shall not revert to the Nation's general fund.

3.03 – Administration and Expenditures

The Environmental Department may use the Environmental Code Enforcement Fund to fund administration of the Environmental Code pursuant to a budget approved by the Council. Expenditures from the fund may include, but are not

limited to, funding educational and outreach material, signage, testing, compliance and enforcement, and Environmental Department staff training.

Article IV: Definitions of General Applicability

As used in the Environmental Code, the following terms shall have the following meaning:

“Attorney General” means the Attorney General and the Office of Attorney General of the Yavapai-Apache Nation.

“Constitution” means the Constitution of the Yavapai-Apache Nation, adopted March 7, 1992 and approved by the United States Department of Interior, Truxton Canon Agency of the Bureau of Indian Affairs on April 3, 1992.

“Emergency Situation” means any natural catastrophe or, regardless of cause, any fire, flood, or explosion, in any part of the Reservation, which in the determination of the Tribal Council causes damage of sufficient severity and magnitude to warrant intervention to alleviate the damage, loss, hardship, or suffering caused thereby.

“Environmental Department” means the Yavapai-Apache Nation Environmental Department.

“Non-Member” means a person who is not an enrolled member of the Yavapai-Apache Nation.

“Person” means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Yavapai-Apache Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

“Public” means the people who may be affected by the environmental impacts of a proposed development, and generally includes tribal citizens and others who live or work within the Yavapai-Apache Reservation.

“Reservation” or “Nation’s lands” means all land beneficially owned by the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde Arizona and held in trust by the United States for the common benefit of the Nation and its Members.

“Traditional uses and practices” means those uses of the land and practices affecting the land that are a part of Yavapai-Apache Nation culture and religious beliefs.

“Tribal Council” means the legislative body of the Yavapai-Apache Nation as defined under Article IV, Section 1 of the Constitution of the Yavapai-Apache Nation.

“Tribal Court” means the Yavapai-Apache Nation’s Tribal Court, as established and empowered under Article VI of the Nation’s Constitution.

“Tribal Member” or “member” or “Nation member” means a person who is an enrolled member of the Yavapai-Apache Nation.

Other Terms may be defined throughout the Environmental Code within the text of the specific Titles where they occur.

“Yavapai-Apache Nation” or “Nation” means the federally recognized Indian Tribe known as the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde Arizona.

Article V: Indemnification and Proof of Insurance

5.01 – Indemnification

Any person other than the Nation who contracts with the Nation for services related to pesticides or toxic chemical storage, use or application; solid waste and hazardous waste disposal, storage, or collection; environmental review; RESERVED; the management of the Nation’s natural resources; or the regulation of air quality and open burning shall indemnify the Nation, or any of its members, officers, agents, or employees, from any claims and liability of any nature whatsoever, including third party suits for personal injury, death, environmental clean-ups, or property damage, which are based on any violations of the provisions of the Environmental Code, guidance documents, order or permit conditions, or any other Federal or Nation environmental laws, and which claims or liabilities are not caused by the acts of the Nation or any of its members, officers, agents, or employees.

5.02 – Proof of Insurance

A. All persons other than the Yavapai-Apache Nation, contractors, vendors, or permittees shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as required by applicable contracts between such persons and the Yavapai-Apache Nation. Insurance requirements may include, but are not limited to, commercial net general liability, automobile liability, workers’ compensation,

professional liability insurance, pollution liability insurance, and/or property insurance.

B. All persons other than the Yavapai-Apache Nation shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of any applicable contract period, unless a different duration is stated in the contract document.

Article VI: Severance

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

Title II – Permit and License Procedure

Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

“Applicant” means any person applying for Nation approval to conduct an activity requiring a permit or license under the Environmental Code.

“Permit” means a document issued by the Nation that gives authorization to a designated person to carry out certain activities within the Nation’s lands, pursuant to any limitations or conditions contained therein.

“License” means a document issued by the Nation that gives authorization to non-members to conduct certain recreational activities on the Reservation, subject to any limitations or conditions contained therein.

Article II: Directives

2.01 – Publicly Available Forms and Applications

A. The Environmental Department shall make the Nation’s applications for the following permits publicly available to all prospective applicants: burn permit; waste tire storage permit; transfer station permit; and non-restricted use pesticide permit.

B. The Environmental Department shall make the Nation’s fishing license application, and camping license application available at publicly accessible locations, including, but not limited to the Cliff Castle Casino and the Yavapai-Apache Administration Building.

2.02 – Fees

The Environmental Department shall charge a fee for permit applications. The Environmental Department may charge an additional fee for the reactivation of a permit which is suspended due to the fault of the permit-holder. The Environmental Department shall publish a fee schedule, subject to approval by the Tribal Council, for any fees established pursuant to this paragraph and make such fee schedule available to the public during regular business hours.

2.03 – Validation

No permit shall be considered valid unless and until it is signed by an authorized representative of the Environmental Department and the applicant.

2.04 – Permit and License Conditions

The Environmental Department may place conditions on permits and licenses as needed to protect the health, welfare, and economic security of the Nation, its members, and the Reservation's natural resources. Such permit conditions may include mitigation measures recommended as a result of any environmental review conducted under Title III.

2.05 – Denial or Revocation

A. The Environmental Department may deny a permit or license if the Environmental Department determines that the applicant does not or will not meet the requirements of this Title.

B. The Department may revoke any tribal permit or license upon determining that the holder thereof has violated or failed to comply with any applicable term, condition or provision of the certificate, license or permit issued by the Nation or by any federal or state authority; has violated or failed to comply with this Title, or any rule, regulation, or order of the Environmental Code; has operated within the Reservation in a careless or negligent manner; has made false, inaccurate or incomplete statements in written materials submitted to the Department; is operating with improper or unsafe equipment; or has endangered the health and safety of workers or of Nation members. Any suspension or cancellation of a permit shall take effect 10 days after written notice except in the event of the Department issuing an emergency order under Title X, Article I, §1.07, in which case the suspension or cancellation shall occur concurrently with the issuance of the emergency order. A suspension or cancellation of a license shall be immediate.

C. Revocation, suspension, expiration or other termination of any federal certificate, license or permit required for an activity on the Reservation that is also permitted by the Environmental Department shall constitute automatic revocation of the permit issued by the Environmental Department, unless the Department waives this provision in writing

D. If the Nation denies or revokes a permit or license application, the applicant may re-apply upon the Applicant/Permittee's cure of the reason for denial or revocation.

E. The denial and revocation of permits are final Nation determinations appealable to Tribal Court under Title X.

Article III: Procedure to Obtain a Permit Other than a Burn Permit

3.01 – Scope

This section shall apply to applicants seeking the following permits: transfer station permits, waste tire storage permits; and non-restricted use pesticide permits.

3.02 – Procedure

A. Applicants seeking to conduct an activity on the Reservation for which a permit is required shall complete the applicable permit application form and return it to the Environmental Department.

B. If there is uncertainty regarding whether a permit is required, the applicant may request clarification in writing from the Environmental Department.

C. The Environmental Department's response to any inquiries submitted pursuant to Title II, Article III, §3.02 (B) shall be conveyed to the applicant in writing within ten business days of the Environmental Department's receipt of the inquiry.

D. Within ten business days of receiving an initial permit application, the Environmental Department shall inform the applicant, in writing, of one of the following:

- i. The permit application is approved and the Environmental Department shall issue a permit.
- ii. More information is required to complete or supplement the application before the Environmental Department can make a determination of whether to issue a permit.
- iii. The permit application is denied.

E. In making its determination of whether to issue a permit, the Environmental Department may solicit input or comments from any Nation department, or federal, state, or local governmental agency that has jurisdiction by law or special expertise.

3.03 – Process Where Additional or Supplemental Information Required

A. Where the Environmental Department makes a determination under Title II, Article III, §3.02 (D) (ii) that more information is required, the applicant will be

responsible for accurately and fully providing the requested information to the Environmental Department.

C. Within ten business days of receiving the supplemental information, the Environmental Department shall either issue a permit or inform the applicant, in writing, that the permit application is denied.

3.04 – Duration

All permits issued by the Environmental Department under this section shall be valid for one calendar year and may be renewed annually upon application to the Environmental Department and satisfaction of all qualifications and requisites therefore.

Article IV: Procedure to Obtain a Burn Permit

4.01 – Scope

This section shall apply to the issuance of all burn permits on the Reservation.

4.02 – Procedure

A. A burn permit application shall be submitted to the Environmental Department at least four working days prior to the date that the open burn is to be commenced. The application shall be on the open burn permit application form provided by the Environmental Department.

B. Within 24 hours of receipt of a complete open burning application submitted pursuant to this Section, the Environmental Department will issue a burn permit if the Environmental Department determines that the proposed open burning activity will not cause an adverse impact on Reservation air quality or otherwise endanger public health or welfare on the Reservation.

4.03 – Notification to Local Fire Districts

A. The Environmental Department shall provide the local fire district with a copy of the burn permit within 24 hours of issuance, and no later than two working days prior to the commencement of the burning activity.

B. On the same business day of the open burn and not less than two hours prior to the permit holder commencing the open burning activity, the Environmental Department shall notify the local fire district and Yavapai-Apache Police Department of the commencement of the open burning activity.

4.04 – Duration

A burn permit shall be valid for the duration of the open burn as specified in the burn permit application and shall not be renewable.

Article V: Procedure to Obtain a Fishing or Camping License

5.01 – Scope

This section shall apply to the issuance of the following: fishing licenses, and camping licenses to non-members.

5.02 – Procedure

A. Non-members may apply for a fishing or camping license at any location where the Environmental Department makes a license application available.

B. If licenses are available for the dates requested, the license shall be granted upon payment of the license fee.

C. A license granted pursuant to this Title shall be considered valid from the moment of payment of the license fee until the expiration date of the license as detailed therein.

5.03 – Duration

A. A license shall be valid for the period specified therein and shall not be renewable.

B. Upon license expiration, a non-member may apply for an additional license[s] to engage in recreational activities throughout the calendar year.

Title III – Environmental Review

Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

“Applicant” means any person proposing a development on the Reservation that requires environmental review pursuant to this Title.

“Cultural resource” means any product of human activity or any object or place given significance by human action or belief as determined by the Nation through its cultural resource experts.

“Development” means the building of any structure, the making of any material change in the use or appearance of any structure, or the making of any material change in the use, appearance, quality or protection of land, water, the Verde River Riparian Conservation Corridor, other natural resources, or cultural resources on the Reservation.

“Determination” means a classification made by the Environmental Department of the environmental impact of a proposed project following Environmental Department’s review of relevant information as mandated by this Title. A Determination may be any one of the following three classifications: “Determination of No Significant Impact;” “Determination of Mitigated Significant Impact” or a “Determination of Significant Impact.”

“NEPA” or the **“National Environmental Policy Act”** means the federal National Environmental Policy Act codified at 42 U.S.C. § 4321 et seq.

“Permanent Road” means a permanent transport route designed to be traveled by motorized vehicles on the Reservation. Temporary access routes created by the Nation are not permanent roads.

“Significant Effect” or **“Significant Impact”** means an effect or impact that significantly affects the quality of the natural environment

“Significant” as used in these Rules has essentially the same meaning as under NEPA and requires considerations of both context and intensity as defined below:

“Context” means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale

rather than in the world as a whole. Both short- and long-term effects are relevant.

“Intensity” means the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

i. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Environmental Department believes that on balance the effect will be beneficial.

ii. The degree to which the proposed action affects public health or safety.

iii. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

iv. The degree to which the effects on the quality of the natural environment are likely to be highly controversial.

v. The degree to which the possible effects on the natural environment are highly uncertain or involve unique or unknown risks.

vi. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

vii. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

viii. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

ix. The degree to which the action may adversely affect an endangered, threatened, or culturally important species or its habitat.

x. Whether the action threatens a violation of Federal or Tribal law or requirements imposed for the protection of the environment.

Article II: Directives

2.01 – Actions Subject to Environmental Review

A. Proposals to initiate the following activities will be subject to environmental review:

- i. Development, for any reason, if the development footprint will exceed 400 sq. feet.
- ii. Mining, grazing, or development of any size within the Verde River Riparian Corridor.
- iii. Road construction of a permanent road or a significant modification of an existing permanent road.
- iv. Proposed new commercial agricultural activities, including commercial livestock and agricultural activities.
- v. Development that will impact any cultural resource on the Reservation, including, but not limited to the alteration of any building or structure of cultural significance to the Nation.
- vi. RESERVED

2.02 – Exemptions

A. In the event of an emergency situation declared by the Nation, construction and other developments that are directly related to the emergency situation shall be exempted from this Title except that, to be declared a permanent structure after the emergency situation is over, they will be reviewed after the fact and be subject to the conditions, removal, and/or restoration following environmental review.

B. Traditional uses and practices shall be exempt from any requirements under this Title.

2.03 – Cost of Documentation for Developments Proposed by Applicants other than the Nation

The cost of collecting and preparing any documentation and data related to the environmental review process for developments proposed by applicants other than the Nation shall be borne by that applicant.

2.04 – Environmental Review Forms

The Environmental Department shall make the Nation’s “Initial Screening Form,” “Environmental Checklist,” and any other forms pertaining to environmental review publicly accessible to prospective applicants.

2.05 – Utilization of Non-Tribal Environmental Review Mechanisms

A. If an applicant is required to prepare either an Environmental Assessment or an Environmental Impact Statement under NEPA regulations, 40 C.F.R. Part 1500, or an Environmental Review through the Arizona Department of Housing for housing developments on the Nation, the provisions of this Title shall be deemed satisfied.

B. All applicants whose proposals are subject to review under NEPA or through the Arizona Department of Housing must submit duplicate copies of all documentation submitted as part of these processes to the Environmental Department

2.06 – Procedure for Environmental Department Determinations for Developments Proposed by Applicants other than the Nation

A. The Environmental Department may issue a “Determination of No Significant Impact” following the evaluation of a completed initial screening form, or following an analysis of a completed Environmental Checklist pursuant to Title III, Article IV, §4.02.

B. The Environmental Department shall only issue a “Determination of Mitigated Significant Impact” or a “Determination of Significant Impact” after the Environmental Department has completed an analysis of a completed Environmental Checklist pursuant to Title III, Article IV, §4.02.

2.07 – Tribal Council Review and Approval of Development for Developments Proposed by Persons other than the Nation

A. For development proposed by any applicant other than the Nation, the applicant may be required to obtain Tribal Council approval, in addition to a determination issued under Title III, Article IV, §4.03.

B. The issuance of a determination under Title III, Article IV, §4.03 shall not exempt an applicant from any and all other applicable Tribal or federal

regulations, including Tribal Council approval pursuant to Title III, Article II, 2.07 (A).

Article III: Procedure for Environmental Review of Development Proposed by the Nation

3.01 – Due Diligence

Where the Nation seeks to advance a development on the Reservation that requires environmental review pursuant to Title III, Article II, §2.01, the Environmental Department and Attorney General’s Office shall conduct an evaluation of the environmental impacts of the proposed development.

3.02 – Written Report, Recommendation, and Presentation to Tribal Council

Following the completion of due diligence, the Environmental Department and Attorney General shall prepare a written report on the proposed development’s environmental impacts; shall make a determination of the proposed development’s impacts pursuant to Title III, Article IV, §4.03; shall make a recommendation to the Tribal Council on whether and how to proceed with initiating the development, including any mitigation measures; and shall present the findings of the report and the recommendation to Tribal Council.

Article IV: Procedure for Environmental Review of Development Proposed by Applicants Other than the Nation

4.01 – Initial Screening

A. Any applicant other than the Nation proposing a development on the Reservation shall complete the Nation’s initial screening form and return it to the Environmental Department.

B. If there is uncertainty regarding whether an activity requires completion of an initial screening form, the applicant may request clarification in writing from the Environmental Department.

C. The Environmental Department’s response to any inquiries submitted pursuant to Title III, Article IV, §4.01 (B) shall be conveyed to the applicant in writing within ten business days of the Environmental Department’s receipt of the inquiry.

D. Within fifteen business days of receiving the Initial Screening Form, the Environmental Department shall inform the applicant, in writing, of one of the following:

- i. The proposed development's impacts are minimal, the initial screening satisfies all environmental review requirements under this Title, and the Department has made a Determination of No Significant Impact pursuant to Title III, Article IV, §4.03 (B)(i). This does not exempt the person from meeting any and all other applicable Tribal, local, state, or federal regulations.
- ii. The proposed development's impacts are significant enough to require the completion of an environmental checklist and the applicant is obligated to follow the procedures set forth in Title III, Article IV, §4.02.
- iii. The proposed development's is subject to review under NEPA or, for certain Nation housing developments, Arizona environmental review and the provisions of Title III, Article II, §2.05 govern.

4.02 – Environmental Checklist and Environmental Department Review

- A. Where the Environmental Department makes a determination under Title III, Article IV, §4.01(D)(ii) that a proposed development has impacts significant enough to require further analysis, the applicant shall complete the Nation's Environmental Checklist.
- B. The applicant will be responsible for accurately and fully providing the information called for by the Environmental Checklist to the Environmental Department.
- C. Within ten business days of receiving an initial Environmental Checklist, the Environmental Department shall inform the applicant whether it wishes to conduct site visits or requires the applicant to submit supplemental documentation, including, but not limited to, requesting the applicant to explore reasonable alternatives and to evaluate the comparative merits of alternative courses of action.
- D. In conducting its analysis of impacts, the Environmental Department may solicit input or comments from any Nation department, or federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any potential environmental impact;

4.03 – Determination by the Environmental Department

- A. The Environmental Department shall take no more than thirty business days following receipt of a completed Environmental Checklist, which shall include any requested supplemental information under Title III, Article IV, §4.02 (C), to conduct its analysis of impacts and provide a written

determination of the proposed development's impact to the applicant, the Attorney General's Office, and the Tribal Council.

B. The Environmental Department's written determination of the proposed development's impacts shall be one of the three following determinations:

i. "Determination of No Significant Impact" means that the Environmental Department, finds that the proposed development has no significant adverse environmental impacts to the Reservation.

ii. "Determination of Mitigated Significant Impact" means that the Environmental Department finds that mitigation measures are required to reduce the proposed development's impact on the Reservation below the threshold of significant adverse impacts.

iii. "Determination of Significant Impact" means that the Environmental Department has identified one or more of the following conditions in the course of its review:

1. Absent or insufficient information to perform a rigorous analysis of the potential environmental impacts;

2. Potential for significant, adverse impacts that cannot be mitigated.

C. Applicants may work with the Environmental Department and any relevant departments to address any issues resulting in a "Determination of Mitigated Significant Impact" or a "Determination of Significant Impact" and may submit further analysis, alternatives, and considerations in order that the proposed development may be reconsidered and reclassified.

4.04 – Duration of an Environmental Department Determination

A. A determination shall be valid for a period of two years, subject to any conditions of approval related to the timing of regulated activities on all or a portion of the development proposal site.

B. A determination shall cease to be effective if the applicant fails to comply with any condition of approval.

C. Where a development has not begun and the Environmental Department finds that new information on environmental impacts has become available or circumstances relevant to the proposal's environmental impacts have changed that were not considered in the initial determination, the Environmental

Department may inform an applicant that supplemental environmental review is required.

D. If any significant changes to the proposed development occur at any time prior to project completion, the applicant shall disclose these changes to the Environmental Department in writing. The Environmental Department shall issue a written opinion on whether supplemental environmental review is required within ten business days of receiving an applicant's disclosure.

E. If supplemental environmental review is required pursuant to Title III, Article IV, §4.04 (C) or (D), the applicant and Environmental Department shall comply with the procedures provided in Title III, Article IV, §4.02 and Title III, Article IV, §4.03 to supplement the existing environmental checklist. The Environmental Department shall require the applicant to provide sufficient information to allow the Environmental Department to evaluate how new information or changed circumstances alters the proposed development's environmental impact.

Title IV – Public Nuisance

Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

“Nuisance” is the maintenance on real property of one or more conditions which (i) unreasonably threaten the health or safety of the public or neighboring land users; or, (ii) unreasonably and substantially interfere with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property. Public Nuisance shall include, but not be limited to each of the following conditions:

(a) The existence of any yard, fence, other structure on property abutting or fronting upon any public street, sidewalk, or place that is in a fallen, decayed, or other dilapidated or unsafe condition.

(b) The existence of wrecked, junked, unserviceable or disassembled vehicles, including, but not limited to the following: trailers, recreational vehicles, house trailers, boats, tractors, cars, trucks, or other vehicle, appliance, or machinery of any kind, or any major parts of any such vehicle, appliance, or machinery.

(c) The existence in a place accessible to children of any attractive nuisance dangerous to children, including but not limited to any abandoned, broken, or neglected equipment, machinery, refrigerator, freezer, or other large appliances.

(d) Buildings, structures, trailers, or recreational vehicles that are abandoned, vandalized, partially destroyed, or permitted to remain in a state of partial construction or partial demolition in such a state as to constitute an attractive nuisance.

(e) Maintaining a property with a reputation for being a place where persons frequently go to:

(1) deliver, possess, manufacture, or use controlled substances;

(2) engage in unlawful conduct such as trespass, assault, fighting, menacing, stalking, harassment or reckless endangerment, gambling, harboring fugitives, harboring stolen property, theft, prostitution, or disturbing the public peace;

(3) avoid service of process or service of a warrant issued by the Tribal Court or any other tribal, federal or state court; or

(4) engage in activities that contribute to the criminal act or delinquency of a minor.

Article II: Delegation of Responsibilities

2.01 – Powers and Duties of the Attorney General

The Attorney General is the lead agency charged with the implementation of this Title on the Reservation, which include administering, and enforcing this Title pursuant to all powers and duties delegated to it and in partnership with other agencies as it sees fit.

2.02 – Powers and Duties of the Environmental Department

The Environmental Department is the lead agency charged with the investigation of public nuisances on the Reservation, which includes initiating partnership with other departments and agencies as it sees fit to accomplish its investigations.

2.03 – Powers of Duties of the Housing Department

The Housing Department shall be informed of, and have the right to participate in, in all investigations and determinations involving residences within the Nation's Housing program. This Code shall be considered additive to, not in lieu of, Housing policies and regulations.

Article III: Directives

3.01 – Complaints

A. The Environmental Department, Police Department, Attorney General, Housing Department, or any other Nation government department or agency may receive complaints regarding alleged public nuisance by any person living and working on the Reservation. Nation government officials may also make complaints about possible public nuisance on the officials' own initiative.

B. Complaints must be made in writing and must provide sufficient specificity about location, duration, and nature of the alleged nuisance to allow for an investigation.

C. Within seven business days of receiving the complaint, the department in receipt of the complaint shall inform the Attorney General of the complaint. The

Attorney General will determine whether to request an investigation of the received complaint within thirty business days.

3.02 – Investigations

Upon the Attorney General’s request, the Environmental Department will investigate to determine whether the condition of a property constitutes a public nuisance as defined by this Title. If the condition of the property could be a serious health concern, the Environmental Department may involve a health officer or other relevant tribal official in the investigation.

3.03 – Recommendation

A. Following the conclusion of an investigation, the Environmental Department shall provide a written report and recommendation to the Attorney General. The Environmental Department’s report shall include, at minimum, a description of the alleged nuisance, a description of investigation activities undertaken, a list of all departments involved in the investigation, and whether the issuance of a Warning or Notice of Violation under Title X is recommended.

B. Within thirty business days of receiving the Environmental Department’s written report and recommendation, the Attorney General shall determine whether to issue a Warning or Notice of Violation pursuant to Title X.

C. If the Attorney General makes a determination to (1) not initiate an investigation or (2) not issue a Notice of Violation, the Attorney General shall provide a written response to the person who made the complaint to inform the complainant of the decision.

Article IV: Prohibitions and Liability

Any violation of the provisions listed in Title IV, Article IV, §4.01 – 4.02 shall result in the issuance of a Notice of Violation.

4.01 – Prohibition on Public Nuisances

No person shall permit, create, maintain, or allow, upon any premises, a public nuisance as defined in Title IV, Article I.

4.02 – Prohibitions Specific to Vehicles

It shall be unlawful for any person(s) to store within the Nation any wrecked, junked, unregistered or unserviceable vehicles and their parts (i.e. cars, trucks, campers and recreational vehicles) for more than thirty days. Vehicles that are

not currently registered and/or are abandoned for more than thirty days on Nation lands and/or public facilities such as roads, streets, alleys, highways, or public parking areas shall be considered a Public Nuisance. In addition to any other remedy provided in this Code, the Nation may abate Public Nuisance related to vehicles as provided in Title IV, Article V.

4.03 – Successive Liability

Every successive owner, lessee or permittee of real property who neglects to abate a continuing nuisance upon the property is liable in the same manner as the one who first created the nuisance.

Article V: Abatement and Cost Recovery

In addition to the enforcement provision of Title X, the following provisions shall govern the abatement of public nuisances and any associated cost recovery:

5.01 – Abatement for Uncontested Notice of Violations

In the event of an uncured and uncontested Notice of Violation for violations of this Title, the Nation may take action to remove, demolish, or otherwise cure the nuisance at the expense of the violator.

5.02 – Abatement Following a Hearing and Judgment in Tribal Court

If the violator fails to abate the public nuisance within thirty (30) calendar days of the judgment in Tribal Court, the Nation may take action to abate the public nuisance, and the person(s) subject to the violation will be held responsible for any costs associated with the abatement plus an administrative charge of two hundred dollars (\$200) and said combined amount shall be considered a debt owed to the Nation. The Nation's abatement action may include, but is not limited to, removing, demolishing, and otherwise curing the nuisance.

5.03 – Abatement in the Case of Public Nuisance Caused by Vehicles.

If the respondent fails to abate a public nuisance involving vehicles within thirty (30) calendar days of the judgment or fails to remedy an uncontested and uncured notice of violation, the Nation may abate public nuisance caused by vehicles by ordering such vehicles to be towed away and impounded at a designated location. Any person claiming such vehicle shall give proof of ownership and pay any towing and storage charges. Vehicles not claimed within 30 days of impoundment may be declared abandoned, advertised, and sold at auction by the Environmental Department to pay for fines, towing, and

storage charges. All remaining income from the sale of the vehicle shall be remitted back to the violator within 90 calendar days of the Nation's receipt of the funds from the sale.

5.04 – Cost Recovery

The Nation may recover any costs it incurs in abating a nuisance by any legal means available, including, but not limited to getting a judgment against the property or levying against the assets of the landowner. In addition, the Nation may levy upon the materials of buildings, fences, or other things that may be removed as a nuisance, as a means of defraying some or all of the costs of removing the nuisance. Nothing in this Title precludes the Nation from recovering any civil penalties assessed under Title X.

Title V – Waste Management

Article I: Definitions

As used in this Title, the following terms shall have the following meaning:

“Act of God” means an event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution.

“Hazardous materials” means: 1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive substances; 2) Any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by the Nation, the State of Arizona or the United States of America; or 3) any substance that is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

“Hazardous waste” means a solid waste as defined in 40 CFR Part 261.3, that is not excluded from federal regulation as a hazardous waste under 40 CFR Part 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR Part 261.5.

“Leachate” means liquid generated from a transfer station dumpster.

“Open burning” means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products.

“Open dump” means an illegal waste disposal site consisting of any facility or site, which is not a sanitary landfill satisfying the criteria under Section 4004 of the Solid Waste Disposal Act (42 U.S.C 6944), and which is not a facility for the disposal of Hazardous Waste, at which solid waste or hazardous waste is disposed of in a manner that does not protect the environment, is susceptible to open burning or is exposed to the elements, vectors and scavengers, and also includes any facility that fails to satisfy the standards and requirements of this Title, the Nations regulations and/or the requirements of 40 CRF Part 258.

“Open dumping” means the depositing of solid wastes into a body or stream of water or onto the surface of the ground at any site that is not licensed by the Nation as a solid waste facility.

“Operator” means any person who operates, controls, maintains or otherwise supervises a waste management facility.

“Owner” means any person who owns all or part of or leases a waste management facility.

“Recycling” means the process of sorting, cleaning, treating and reconstituting solid waste or other discarded materials in order to prepare the altered form for use.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of solid waste, oil, or hazardous substances into the environment. The term “release” also includes, but is not limited to the abandonment or disposal of waste or the abandonment or discarding of barrels, containers and other receptacles containing any hazardous substance, oil or threat thereof.

“Remedial action” means those actions consistent with a temporary or permanent remedy taken instead of, or in addition to removal actions in the event of a release or threatened release of a solid waste, oil or hazardous substance into the environment. A remedial action shall prevent or minimize the release of a solid waste, oil, or hazardous substance so that it does not migrate, impair uses or cause damage or harm, or impair use to present or future public health, safety, welfare or the environment.

“Remedial action costs” means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to, the costs of administration, assessment, investigation, legal or enforcement activities, contracts and health studies.

“Resource Conservation and Recovery Act” or “RCRA” means the federal Resource Conservation and Recovery Act, as amended, that is set forth at 42 U.S.C. § 69401 et seq.

“Safe Drinking Water Act” or “SDWA” means the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, 42 USC §300 (f) et seq.

“Solid waste” means all putrescible and non-putrescible solid, semisolid and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste,

abandoned vehicles and parts thereof, discarded home and industrial appliances, dead animals, manure, vegetable or animal solid and semisolid waste; but not including hazardous waste; solid or dissolved material in domestic sewage; liquid, solid, or semisolid waste from wastewater treatment plant, biosolids, effluent, solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.

“Storage” means the accumulation of solid waste after generation and prior to and following collection, processing, composting, recycling, transportation and/or disposal.

“Transfer station” means a permanent, fixed, supplemental collection and transportation facility, used by persons and/or route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

“Waste tire” means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer’s original specifications.

Article II: Directives

2.01 – Commercial Collection of Solid Waste

A. The Nation’s Departments shall arrange for collection and hauling of solid waste from the Nation’s buildings, residences, and facilities to a proper disposal facility. The Nation’s Departments may issue permits and enter into contracts to fulfill these duties as needed.

B. C. The Utilities Department shall arrange for the collection and disposal of all waste collected or generated at facilities operated by the Utilities Department.

2.02 – Collection of Hazardous Waste

A. The Nation’s Departments shall arrange for collection and hauling of hazardous waste from the Nation’s buildings, residences, and facilities to a proper disposal facility. The Nation’s Departments may issue permits and enter into contracts to fulfill these duties as needed.

B. The Environmental Department may remove any hazardous waste, which has been disposed of in violation of this ordinance, without prior notification to the violator.

2.03 – Commercial Recycling

The Nation and its departments shall arrange for collection and hauling, or other disposal of recycling from the Nation's buildings, residences, and facilities.

2.04 – Illegal Dumping

A. The Environmental Department shall utilize whatever reasonable monitoring and enforcement it finds necessary to control the problems associated with solid waste outlined in Title I, Article I, §1.02 (B)(i), and to protect the Nation and its residents.

B. The Environmental Department shall post notice of the Nation's prohibitions on dumping waste on the Reservation at areas that have been utilized for illegal dumping. Such notice shall include information about the civil penalties for illegal dumping.

C. When solid waste or hazardous waste is dumped, burned, or otherwise deposited in violation of this Title and three or more items in the solid waste and/or hazardous waste identify the same person as owner or recipient, there shall be a rebuttable presumption that that person is responsible for the illegal dumping, burning, or depositing.

2.05 – Waste Collection Outreach and Education

A. The owners or operators of any waste collection services operating on the Reservation may establish rules and guidelines to inform Nation residents and businesses about any relevant solid waste collection policies and guidance. The Nation's departments shall work with the owners and operators of waste collection services operating on the Nation to inform Nation residents and businesses of any applicable rules and guidelines pertaining to waste collection at Nation residents and businesses.

B. The Environmental Department shall post notice of any Department-sponsored waste collection events occurring on the Reservation at least ten business days in advance of the collection event. The Environmental Department shall conduct sufficient outreach and education to inform Nation residents and businesses of any applicable rules, guidelines, or other information pertaining to waste collection events occurring on the Reservation.

2.06 – Transfer Stations Owned and Operated by Persons Other than the Nation

A. Owners and operators of transfer stations shall comply with the following requirements:

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

ii. If leachate is generated, it must be collected and disposed of in accordance with applicable federal laws and the Nation's laws and regulations.

iii. The owner or operator of the transfer station shall ensure that responsible individuals who are familiar with the requirements and the operational requirements of the transfer station, and have received all training required to operate any machinery are on-call to visit the transfer station as needed and perform any required maintenance.

iv. Unloading of solid waste at the transfer station may take place only within approved designated areas.

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

vi. Transfer stations shall not accept any waste prohibited under Title V, Article III, §3.13(B).

vii. Owner and operators of a transfer station shall obtain a transfer station permit from the Environmental Department.

viii. The provisions of Title II shall govern the issuance of any transfer station permit required under Title V, Article II, §2.06 (A) (vii)

B. Owners and operators proposing to own or operate a transfer station on the Reservation shall obtain written approval from the Environmental Department of a plan of operation for the facility. The plan of operation shall be submitted on a form provided by the Environmental Department. The plan of operation shall, at minimum, specify property and ownership information, the intent and objectives of the proposal, methods and procedures to minimize adverse environmental impacts, final disposal sites for transferred waste, the lifespan of the facility, and a design that complies with the operational requirements in this section.

C. Owners or operators proposing to own or operate a transfer station on the Reservation must obtain a resolution from the Tribal Council approving the siting and operation of the transfer station on the Reservation. The Tribal Council shall not consider a request for a transfer station unless the owner or operator has received approval of their plan of operation from the Environmental Department.

2.07 – Transfer Stations Owned and Operated by the Nation

A. The Nation shall comply with the following requirements:

i. A sign shall be prominently posted at the entrance to the transfer station, which states the name, license number, hours of operation, waste types accepted, necessary safety precautions, and any other pertinent information as specified by the Department in the permit.

ii. If leachate is generated, it must be collected and disposed of in accordance with applicable federal laws and the Nation's laws and regulations.

iii. The Nation shall ensure that responsible individuals who are familiar with the requirements and the operational requirements of the transfer station, and have received all training required to operate any machinery are on call to visit the transfer station and perform any required maintenance.

iv. Unloading of solid waste at the transfer station may take place only within approved designated areas.

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

vi. Transfer stations shall not accept any waste prohibited under Title V, Article III, §3.13(B).

vii. The Nation shall obtain a transfer station permit from the Environmental Department.

viii. The provisions of Title II shall govern the issuance of any transfer station permit required under Title V, Article II, §2.06 (A) (vii).

B. All transfer stations owned and operated by the Nation shall be approved by the Tribal Council, including approval of the siting of any transfer station.

C. The Environmental Department and Attorney General shall work together to prepare a plan of operation for the Nation's transfer station that must at minimum, specify property and ownership information, the intent and objectives of the proposal, methods and procedures to minimize adverse environmental impacts, final disposal sites for transferred waste, the lifespan of the facility, and a design that complies with the operational requirements in this Title.

2.08 – Underground Storage Tanks

A. The federal regulations found at 40 C.F.R Part 280 as of July 15, 2015 are hereby incorporated by reference as the Nation's Underground Storage Tank regulations.

B. The Underground Storage Tank Inspection Agreement Between the Yavapai-Apache Nation and the Inter-Tribal Council of Arizona executed April 3, 2015 is hereby incorporated by reference into this Title.

C. Any notifications, submittals, or reports required to be made to EPA pursuant to 40 C.F.R. Part 280 shall simultaneously be made to the Environmental Department.

D. No Underground Storage Tanks shall be installed, used, or operated on the Reservation without written approval of the Tribal Council.

2.09 – Waste Tire Collection, Handling, and Storage

A. The owner or operator of any location at which more than 25 waste tires are collected, handled, or stored at any one time must comply with the following criteria:

i. The owner or operator must remove waste tires to a transfer station for disposal within six months.

ii. The owner or operator of the location where such tires are held shall maintain compliance with all applicable Nation and federal laws.

iii. The owner or operator shall maintain the site in a manner that prevents the breeding or harboring of insects and rodents or other vectors in or among the tires.

iv. The owner or operator shall remove all excessive debris, liquid, and dirt from the tires as the tires enter the location and before the tires are put into storage.

v. The owner or operator shall control drainage of the location so that water is diverted away from the tires; run-off from tires is controlled; and water is not allowed to accumulate.

vi. The owner or operator of the site shall obtain a waste tire storage permit from the Environmental Department.

vii. The provisions of Title II shall govern the issuance of any waste tire storage permit required under Title V, Article II, §2.09 (A) (vi).

B. Waste tires generated within the Nation's lands may be disposed of in the following manner:

- i. Waste tires may be disposed of at an external transfer station.
- ii. Waste tires may be disposed of at any Nation transfer station permitted to accept waste tires.
- iii. Waste tires may be taken to a permitted waste tire storage site on the Reservation, operating pursuant to Title V, Article II, §2.09 (A), for temporary storage not to exceed six months.
- iv. Waste tires may be collected by a Nation-approved sub-contractor during bulk trash pickups in accordance with Environmental Department policy.

Article III: Prohibitions

Any violation of the provisions listed in Title V, Article III, §3.01 – 3.14 shall result in the issuance of a Notice of Violation.

3.01 – Collection

No person, other than the Nation's departments and those with a current contract with the Nation, shall engage in the commercial collection of solid waste or hazardous waste on the Reservation.

3.02 – Commercial Recycling

No person, other than the Nation's departments and those with a current contract with the Nation, shall engage in commercial recycling operations on the Reservation.

3.03 – Open Dumping

No person shall dispose of, dump, scatter, place, or cause to be disposed of, dumped, scattered, or placed, any solid waste or hazardous waste within the Reservation with the exceptions of placement for Nation-approved cleanups, or at designated transfer stations.

3.04 – Open Burning

No person shall cause open burning of any material within the exterior boundaries of the Reservation, except as permitted pursuant to Title II or as allowed under Title VII.

3.05 – Hazardous Waste

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

B. Subject to the following substitutions and exceptions, no person may generate, treat, store, dispose of, handle, manage, use, or re-use hazardous waste or used motor oil within the Reservation except in compliance with the Resource Conservation and Recovery Act (RCRA) federal regulations found at 40 C.F.R. Parts 260, 262, 263, 264, 265, 266, 273 and 279, which are hereby incorporated by this reference as part of this Title. For the purpose of this incorporation by reference, the term “Environmental Department” shall be substituted for the term “Regional Administrator,” and “State Director.”

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

3.06 – Importing waste

No person shall import, dispose of (or cause to be imported or disposed of) within the exterior boundaries of the reservation, any solid waste or hazardous waste generated outside of the Reservation.

3.07 – Improper Storage of Waste

It is unlawful to store or accumulate solid waste in a manner that is a hazard to the public health, safety, or the environment. The owner, agent, or occupant of any dwelling, residence, premises, or business establishment shall be responsible for the condition of said residence, premises, or business establishment, and for the safe storage and stockpiling of all solid waste accumulated for appropriate collection. Solid waste shall be stored in durable, rust resistant, non-absorbent, water tight, rodent proof, and easily cleanable containers, with a close fitting, insect tight cover, or other container or method approved by the Environmental Department.

3.08 – Transportation of Waste

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

3.09 – Biosolids

With the exception of the Yavapai-Apache Nation Utility Department and Agricultural Department, no person may spray or spread biosolids on the land surface, inject biosolids below the land surface, or otherwise incorporate biosolids into the soil. Biosolids generated by a duly permitted wastewater treatment facility may be spread and dried prior to use on the Nation or prior to off-site disposal or sale.

3.10 – Landfills

No person may construct or operate a landfill within the exterior boundaries of the Reservation, except by law or resolution issued by the Nation.

3.11 – Underground Storage Tanks

- A. No person may install or operate any underground storage tank or underground storage tank system except in compliance with the following: (1) the federal regulations found at 40 C.F.R. Part 280 as of July 15, 2015; and (2) the Underground Storage Tank Inspection Agreement Between the Yavapai-Apache Nation and the Inter-Tribal Council of Arizona executed March 3, 2015.
- B. No UST shall be installed on the Reservation without Tribal Council approval.

3.12 – Waste Tire Prohibition

- A. No person may import waste tires from outside the Reservation boundaries for any purpose.
- B. No person may own or operate a facility that physically, chemically, or mechanically processes or alters waste tires.
- C. No person may collect, handle, or store more than 25 waste tires at the same location at one time, except persons in possession of a waste tire storage permit issued pursuant to Title II.

3.13 – Transfer Stations

- A. No person may own or operate a solid waste transfer station on the Reservation unless the person has obtained all approvals required under Title V, Article II, §2.06.
- B. The following waste shall not be accepted at any transfer station permitted by the Nation: sewage, sewage solids, biosolids, sludge, asbestos, wastes containing free liquids, explosive or flammable wastes, corrosive wastes, wastes that are burning, and hazardous wastes (except household hazardous wastes accumulated for proper disposal by the Environmental Department).

3.14 – Defacement

No person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted by or under the instructions of the Environmental Department or Tribal Council to assist in the enforcement of this Title.

Article IV: Strict Liability for Corrective Action and Cost Recovery Actions Related to the Release of Solid Waste, Oil, or Hazardous Substances into the Nation's Environment.

4.01 – Strict Liability

- A. The following persons shall be strictly liable for the costs of all remedial action incurred by the Nation or by any other person that are attributable to or associated with a facility or release and for damages, injury, death, impaired use, or destruction of any person, property, cultural resources, or natural resources caused by a release.
 - i. Any owner or operator of the facility at or during the time of the acts or omissions that resulted in the release;

ii. Any subsequent owner or operator who agreed to assume the assets, liabilities and obligations of the owner or operator at the time of the acts or omissions resulting in the release;

iii. Any person who, by acts or omissions, caused, contributed to, or exacerbated the release; and

iv. Any person who unlawfully hinders or delays entry to, investigation of a removal or remediation action at a facility.

4.02 – Exemptions

A. The following persons shall not be liable for remedial action costs incurred by the Nation or any other person that are attributable to or associated with a facility or release and for damages, injury, death, impaired use, or destruction of any person, property, cultural resources, or natural resources caused by a release:

i. Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator; and

ii. Any owner or operator, if the release at the facility was caused solely by an Act of God as defined in this Title.

B. To establish, for purposes of this Title, that the person did or did not have reason to know, the person must have undertaken, prior to becoming the owner or operator, all appropriate inquiry into the previous uses of the property consistent with good commercial or customary practices in an effort to minimize liability.

4.03 – Clean-up Standards

Any removal or remedial action performed under the provisions of this section shall attain a degree of cleanup and control of further release of the solid waste, oil, or hazardous substance that assures protection of present and future public health, safety, welfare and the environment in compliance with Nation's laws or applicable federal standards, including RCRA corrective action standards.

Title VI – Pesticide & Toxic Chemicals

Article I: Definitions

As used in this Title, the following terms shall have the following meaning:

“Application” means the method by which pesticides are delivered to their biological targets.

“Certified Applicator” means a commercial applicator or a private applicator, as defined in this Article, who have obtained EPA-approved certifications to apply restricted use pesticides on the Reservation.

“Commercial Applicator” means an applicator who uses or supervises the use of any pesticides which are classified for restricted use on any property other than property owned or controlled by the applicator, the applicator’s employer, or another person, if the application is performed without compensation.

“Direct Supervision” means that a pesticide is applied by a person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

“EPCRA Section 313” means Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11023, 42 U.S.C. 11023 et seq., as amended as it may be amended from time to time hereafter.

“FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act of 1972, Public Law 92-516, Section 2, 86 Stat. 973 et seq., 7 USC sections 136 et seq., as amended and as it may be amended from time to time hereafter.

“General Use Pesticide” means a pesticide generally available to the public without a license and not classified by the EPA for restricted use as specified in 40 CFR 152.175.

“Label” means the written, printed, or graphic material on, or attached to, the pesticide, toxic substance, or device or any of its containers and wrapping.

“Private Applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use under section 3 of FIFRA, 7 U.S.C. § 136a(d) for purposes of producing any agriculture commodity on property owned or rented by him or his employer or (if applied without

compensation other than trading of personal services between producers of agriculture commodities.

“Pest” means any weed, insect, vertebrate, nematode, fungus, virus, bacteria or other pathogenic organism that is found in a location where its presence is undesirable and any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism on or in living humans or other living animals, which the Department declares to be a pest for the purpose of enforcing this Title.

“Pest Management Business” means a person engaged in the business of pest control that employs (1) a certified applicator for the purpose of using a pesticide which is classified for restricted use under section 3 of FIFRA, 7 U.S.C. § 136a(d) while engaging in the performance of official duties to control pests on the Reservation for compensation; or (2) a person who uses general use pesticides while engaged in the performance of official duties to control pests on the Reservation for compensation.

“Pesticide” means any substance or mixture of substances intended to be used for (i) preventing, destroying, repelling or mitigating any pest, or (ii) causing the leaves or foliage to drop from a plant or artificially accelerating the drying of plant tissue, or (iii) accelerating or retarding the rate of growth or maturation, or otherwise altering the behavior or extent that they are intended as plant nutrients, trace elements, nutritional substances, plant inoculants and soil amendments. Any substance or mixture of substances defined or designated as a pesticide or plant regulator under FIFRA and tribal regulations shall be considered a pesticide.

“Restricted Use Pesticide” or “Restricted Pesticide” means any pesticide classified as a restricted use pesticide by the U.S. EPA under section 3 of FIFRA, 7 U.S.C. § 136a(d) and identified as such or required to be identified as such by the pesticide product itself.

“TRI” means the Toxics Release Inventory established by EPCRA Section 313, 42 U.S.C. 11023, 42 U.S.C. 11023 et seq.

“Toxic Chemical” The term “toxic chemical” means a substance on the list described in Section 313 (d) of EPCRA, 42 U.S.C. 11023.

“Worker Protection Standard” means the Environmental Protection Agency Agricultural Worker Protection Standard codified under 40 CFR Part 170.

[Article II: Adoption by Reference](#)

2.01 – FIFRA

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

2.02 – ITCA Agreement

On April 7, 2016, the Nation adopted Tribal Council Resolution No. 68-16 “Approving a Pesticide Program Inspection Agreement between the Yavapai-Apache Nation and the Inter-Tribal Council of Arizona.” Said Pesticide Program Agreement is hereby incorporated by reference as part of this Title.

2.03 – Worker Protection Standard

The Environmental Protection Agency’s Agricultural Worker Protection Standard codified under 40 C.F.R. Part 170 is hereby adopted by reference and incorporated into this Title.

2.04 – Toxics Release Inventory

A. Section 313 of the Emergency Planning and Community Right to Know Act is hereby adopted by reference and incorporated into this Title. If a provision of this Title is more stringent than a provision of EPCRA Section 313, the person shall comply with the more stringent provision of this Title.

B. The Nation takes notice of EPA Final Rule “Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments Under the TRI Program,” 40 C.F.R. 372, 77 F.R. 23409, and designates the Environmental Department as the contact for any reports submitted pursuant to EPCRA 313.

Article III – Pesticides and Toxic Chemical Control Officer

3.01 – Pesticides and Toxic Chemical Control Officer

A. There is hereby established a Pesticide and Toxic Chemical Control Officer [“Officer”] within the Environmental Department. The Officer shall be designated by the Environmental Department and may be selected from the Environmental Department’s existing employees. The salary and expenses of the Officer, including equipment and training, shall be paid for under the Environmental Department’s budget as approved by the Tribal Council.

B. The Officer is hereby designated as the Nation's lead officer responsible for administering this Title and is authorized to exercise all of the regulatory authority necessary for this purpose, including, but not limited to, the following:

- i. Monitoring compliance with this Title; conducting inspections, investigations, and sampling as necessary to implement this Title; and enforcing this Title;
- ii. Proposing amendments to this Title and the permit systems from time to time to reflect amendments to FIFRA, the Worker Protection Standard, and other information, experiences, or developments warranting the proposal of such amendments;
- iii. Proposing for Tribal Council adoption reasonably necessary regulations, policies, and procedures consistent with requirements under the Nation's laws and federal law regarding pesticide and toxic substance use for the protection of the health, safety, and welfare of the Nation;
- iv. Issuing permits, registrations, and certifications under the provisions of this Title;
- v. Imposing emergency requirements regarding regulated activities as necessary to protect the health, safety, and welfare of the Nation against hazards posed by pesticide usage considering the reasonably accessible data and information that a reasonable Pesticide Control Officer should consider technically and scientifically credible. If the Officer decides such an emergency exists that requires an immediate action, including, but not limited to, the confiscation and quarantine of improperly or misapplied pesticides, the Officer may authorize such an emergency action.
- vi. Working cooperatively with federal, tribal, state, county and municipal government agencies, and private agencies, and persons with technical expertise, in the adoption and implementation of a pesticide control program, including entering into cooperative agreements with such other governmental agencies, as approved by the Tribal Council, providing for coordination in regulating and controlling restricted pesticides.
- vii. Designating geographical areas, times, and circumstances where the application, storage, transportation, and handling or other use of pesticides shall be restricted or prohibited.

Article IV: Pesticide Permits and Certifications

4.01 – Federal Pesticide Applicator Certification

A. All private and commercial applicators of restricted use pesticides shall obtain a federal pesticide applicator certification before applying any restricted use pesticides on the Nation. As detailed in 40 C.F.R. Part 171, this certification may be obtained pursuant to a federal plan for certification through the EPA; through an EPA-approved Nation applicator certification plan where such a plan is in effect; or through a state certification program, where the Nation has obtained all necessary agreements with the State of Arizona and EPA approval.

B. Applicants shall provide copies of all applications for a federal pesticide applicator certification and all certifications obtained from the EPA to the Pesticides and Toxic Chemical Control Officer.

4.02 – Non-Restricted Use Pesticide Permit

A. Unless exempted under Title VI, Article IV, §4.02(B), all persons shall obtain a Non-Restricted Use Pesticide Permit from the Environmental Department before engaging or offering to engage in any activity involving the storage, application, or use of any non-restricted use pesticide on the Reservation.

B. Title VI, Article IV, § 4.02 (A) shall not apply to the following:

i. Person(s) applying general use pesticides on property where the person(s) resides or operates a business, provided that this exemption shall not apply to schools, child care, elder care, food services, and medical facility businesses.

ii. A person who has obtained a valid and current federal pesticide applicator certification pursuant to Title VI, Article IV, § 4.01.

iii. A person who is contracting for pesticide application services with a person who holds current and complete permits and certifications required under this Title.

iv. Applicators acting under authority of a tribal, federal, or state government agency or political subdivision thereof while in response to an emergency situation, provided that said agency provides to the Environmental Department for approval in advance written notice containing the reasons for the emergency situation and their plan for pesticide usage.

C. The provisions of Title II shall govern the issuance of Non-Restricted Use Pesticide Permits.

Article V – Toxic Chemicals

5.01 – EPCRA Section 313 Facilities

A. It is of the utmost importance to the Tribal Council that the Nation and those that live and work within it are informed of and protected from the release of toxic chemicals.

B. The Pesticide and Toxic Chemical Control Officer shall monitor annual releases of toxic substances from all facilities subject to EPCRA Section 313 reporting that are located on or within ten miles of the Nation. The Pesticide and Toxic Chemical Control Officer shall work directly with EPA to assess the impact of these releases on the Nation.

C. If the Pesticide and Toxic Chemical Control Officer determines that the releases occurring from facilities subject to EPCRA Section 313 reporting pose a threat to the Nation, the Pesticide and Toxic Chemical Control Officer, in coordination with the Attorney General, shall bring this matter to the attention of Tribal Council, through a written report and presentation.

5.02 – Proposing Additions of EPCRA 313 Facilities

A. The Pesticide and Toxic Chemical Control Officer shall assess the threat that existing or new facilities operating on the Nation pose with regard to a release of toxic substances.

B. In making the assessment directed under 4.02(A), the Pesticide and Toxic Chemical Control Officer shall have the authority to request information about the use of toxic chemicals from the owner or operator of facilities operating on the Nation including, but not limited to, requiring the facility to submit an inventory describing which chemicals, if any, included on the list described in Section 313 (d) of EPCRA, 42 U.S.C. 11023 are manufactured, processed, or otherwise used by that facility and what amounts of such chemicals are used, manufactured or processed.

C. If the Pesticide and Toxic Chemical Control Officer makes a request pursuant to 4.02(B), the owner or operator of the facility shall provide the requested information within 30 days unless granted an extension in writing by the Pesticide and Toxic Chemical Control Officer.

D. If the Pesticide and Toxic Chemical Control Officer determines, in coordination with the Attorney General, that it is in the best interest of the

Nation for a facility on the Reservation that is not currently covered by EPCRA Section 313 to be subject to EPCRA TRI reporting requirements, the Pesticide and Toxic Chemical Control Officer shall prepare a written recommendation to Tribal Council that the Nation requests EPA apply EPCRA TRI reporting requirements to that facility.

E. The Tribal Council shall have final authority in determining whether to submit the request recommended under Title VI, Article V, § 5.02(D) to the EPA.

Article VI – Directives

6.01 – Safeguarding Against Adverse Effects of Pesticides and Toxic Chemicals

A. It is the policy of the Nation that all persons living and working on the Reservation shall be protected from the adverse effects of pesticides and toxic chemicals.

B. At all times, persons applying pesticides or toxic chemicals or supervising the application of pesticides or toxic chemicals on the Reservation shall make maximum effort to protect themselves and those around them from harmful exposure to and direct contact with such substances.

C. All persons applying or using pesticides or toxic chemicals on the Reservation must utilize protective equipment that minimizes direct exposure with skin, airways, and eyes. Such precautions must include, at minimum, full compliance with the recommendation for protective equipment found on the label of the pesticide or toxic chemicals at issue.

D. A certified applicator or pesticide permittee working on the Reservation shall notify Nation schools, elder care, and child-care facilities at least 72 hours prior to any pesticide application.

E. The governing board of each Nation school and child-care facility shall develop a policy to provide pupils, employees, parents, and guardians with at least 48 hours of notice before pesticides are applied on the premises of schools or child-care facilities.

F. Only certified applicator or pesticide permittees shall apply pesticides in schools, child care, elder care, food services, and medical facilities on the Reservation.

6.02 – Farm Worker Safety

A. Employers must provide training on pesticide safety to all workers and handlers who will enter an agricultural field treated with pesticides within the past 30 days or a field that has been under a restricted entry interval (or “REI”) within the last 30 days. This training must include a verbal explanation of the Farmworker Safety rights guaranteed under this Title and available remedies.

B. Employers must inform workers about where and when pesticides were sprayed or applied to avoid accidental exposures. Employers must post information about recent pesticide application (including name of the pesticide, location of agricultural field, applicable REIs, and Safety Data Sheets) in an easily accessible central location and must provide this information in English and Spanish.

C. Employers must provide sufficient water, soap, and towels for employees to wash their hands on a regular basis and to wash themselves in case of an accidental exposure to pesticides. Employers must provide an emergency eye-wash kit on site in a location immediately accessible to all employees.

D. If a worker becomes ill due to pesticide exposure, the employer must promptly make available transportation (which can include calling an emergency response vehicle) to a medical facility. An employer must provide information about the pesticide to which the person may have been exposed to the injured worker or treating medical personnel.

6.03 – Notice and Records

A. All pesticide permittees and certified applicators must provide written notification via fax, email, or hand delivery to the Pesticide and Toxic Substance Control Officer at least twenty-four (24) hours in advance of the application of restricted use pesticides. This notice shall include, but is not limited to, the date and approximate time the application will take place, the specific pesticides or substances by trade name, and the location of the planned application. A copy of any forms mandated by federal law to be provided to the EPA must also be provided to the Officer.

B. Immediately following a pesticide application in a residence, building, commercial development, or school, the certified applicator or pesticide permittee shall provide a written notice to the customer authorizing the application containing the following information: name and address of the customer; location where the pesticide was applied; date of application; trade name of pesticide applied; and if applicable, EPA registration number of restricted use pesticide applied; amount of pesticide applied, expressed in terms of percent active ingredient and volume of diluted mixture; name and certification number of applicator; and the following statement, which shall be placed in a publicly available location, printed in at-least a twelve point font

“WARNING – Pesticides can be harmful. Keep children and pets away from applications for 24 hours after date of application. For more information, contact [applicators name and certification number] at [applicator’s telephone number].”

C. Each certified applicator who applies or otherwise uses restricted pesticides under authority of a tribal certificate, or permit shall keep a record of each property treated and, upon request by the Officer shall furnish copies of said records to the Officer. Such records shall be kept by such person for a period of two years unless a longer period is specified by the Officer, and shall contain the name and address of the property owner; type and strength of pesticide used; a description of the method by which such pesticide was applied; the name and address of the person or firm where the pesticide was purchased; the address of the person applying the pesticide; the date, month, year, and time of day of the application, the direction and estimated velocity of the wind at the time of application and description of the principal equipment used in the application; the name and address of the person or persons who disposed of the pesticide containers, the type of container and the manner and location in which the containers were disposed of.

6.04 – Spills

A. All persons must notify the Pesticide and Toxic Chemical Control Officer or the Environmental Department whenever a reasonable person would think that a spill of pesticides or toxic chemicals may present a hazard to humans or the environment within the Nation. This shall include, but is not limited to, events when a person learns of the spillage of one gallon or more of pesticide or toxic substance in concentrated form or the spillage of five gallons or more of a diluted pesticide or toxic chemical.

B. Excess quantities of pesticide and toxic chemicals; pesticide and toxic chemical waste generated during clean-up or spill events; and pesticide and toxic chemical containers are considered waste, which may be either a solid waste or hazardous waste.

C. All persons shall take maximum precaution in managing pesticide and/or toxic chemical waste created by spills until the Environmental Department can arrange for the transportation of the waste off the Reservation for reuse, recycling, disposal, or other federal or state approved method.

Article VII: Prohibitions

Any violation of the provisions listed in Title VI, Article VII, §7.01 – 7.04 will result in the issuance of a Notice of Violation.

7.01 – Application of Pesticides and Toxic Chemicals

A. No person shall apply or otherwise use any pesticide within the Reservation unless that person has all required permits.

B. No person shall apply or otherwise use any pesticide on the Reservation unless the pesticide is properly and currently registered pursuant to both the FIFRA and the Nation's regulations.

C. No person shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, shop, transport, handle, store, apply or otherwise use, or dispose of any pesticide or toxic chemical within the reservation if such activity would be prohibited by FIFRA and/or the Nation's regulations or rules, or any regulation or order issued pursuant thereto.

D. Any experimental use of pesticides by the permittee within the reservation must occur in strict compliance with the terms of the permit and such additional restrictions or requirements as may be imposed by the Officer.

E. No person shall apply or use a pesticide or toxic chemical except in accordance with its label and labeling instructions, including, but not limited to the use of personal protective clothing and equipment. A person shall not use or instruct another to apply or use a pesticide or toxic chemical in a manner inconsistent with its labeling.

F. No person except those permitted by the Environmental Department shall apply pesticides in schools, child care, elder care, food services, and medical facilities on the Reservation.

7.02 – Drift, Aerial Application, and Worker Exposure

A. An applicator applying a pesticide or toxic chemical shall not allow the pesticide to drift onto a non-target area that will cause contact with any person or damage to the environment.

B. An applicator applying a pesticide or toxic chemical shall not apply or allow the pesticide or toxic chemical to drift within a quarter mile of the property boundary of a school, day care center, elder-care center, detention facility, health care facility, or residence.

C. Ground applications are prohibited whenever the constant wind velocity exceeds 10 mph at nozzle height.

D. The aerial application of pesticides and toxic chemicals shall not be permitted within the Yavapai Apache Nation.

E. No worker may enter an area where a pesticide has been used within the last 30 days without receiving a full safety training as provided under Title VI, Article VI, § 6.02

F. No employees under the age of sixteen, agricultural workers under the age of sixteen, or workers on the Reservation under the age of sixteen shall be allowed to handle, apply, or manage the disposal of pesticides or toxic chemicals on the Reservation.

7.03 – Storage and Transport

A. Persons shall store pesticides or toxic chemicals according to applicable label instructions.

B. Persons shall store all restricted use pesticides and toxic chemicals in a storage structure that meets the following requirements:

- i. Is secure from unauthorized entry;
- ii. Is secure from rain and protected from direct sunlight;
- iii. Has sufficient ventilation to prevent build-up of substance odors and gases;
- iv. Has emergency eyewash bottles and a first aid kit suitable to treat injury from the type of pesticide or toxic substance stored,
- v. Has posted emergency medical information that includes the telephone number of the nearest poison control center;
- vi. Has an operational fire extinguisher;
- vii. Has a conspicuously placed sign in the entrance stating that restricted use pesticides or toxic substances are stored within the building.

C. If a person stores or transports a pesticide or toxic chemicals in a service container, a durable and legible tag must be placed on the service container that lists the brand or trade name of the pesticide or toxic chemical, the EPA registration number, the name and percentage of the active ingredient, the EPA-assigned signal word, and the phrase “KEEP OUT OF REACH OF CHILDREN.”

D. All openings on service containers and portable application equipment containing pesticides and toxic chemicals shall be equipped with covers that prevent splashes and spills

E. All pesticides and toxic chemicals transported by vehicle shall be transported in a manner to prevent spillage or leakage of substances.

7.04 – Defacement

No person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted by or under the instructions of the Environmental Department or Tribal Council to assist in the enforcement of this Title.

Title VII – Air Quality

Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

“Air pollutant” means any air pollution agent or combination of such agents including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administrator of EPA has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

“Air pollution” means the presence in the ambient air of one or more air pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the ambient air.

“Ambient air” means the portion of the atmosphere, external to buildings, to which the general public has access.

“Burn Ban” means a period of time when any open burning on the Reservation is prohibited

“Clean Air Act” or **“Act”** means 42 U.S.C. § 7401 *et seq.*, as amended.

“Extinguished” means there is no visible smoke from a burn area and the burn

pile is cool enough for human touch.

“Hazardous materials” means: 1) any substance that poses a threat to human health or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive or chemically reactive substances; 2) Any substance that is hazardous, toxic, ignitable, reactive or corrosive and that is defined and regulated as such by the Nation, the State of Arizona or the United States of America; or 3) any substance that is defined to be hazardous or toxic by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., as either act may be amended from time to time, and by any regulations promulgated thereunder, including but not limited to any substance, material, smoke, gas, particulate matter or combination thereof containing asbestos, petroleum or its byproducts or polychlorobiphenyls (“PCBS”).

“Hazardous waste” means a solid waste as defined in 40 CFR Part 261.3, that is not excluded from federal regulation as a hazardous waste under 40 CFR Part 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR Part 261.5.

“National ambient air quality standard” or “NAAQS” means the ambient air pollutant concentration limits established by the Administrator pursuant to § 109 (42 U.S.C. § 7409) of the Clean Air Act.

“Open burning” means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products. “Open burning” includes burning in burn barrels.

“Solid waste” means all putrescible and non-putrescible solid, semisolid and liquid waste, including but not limited to garbage, trash, refuse, paper, rubbish, ashes, industrial waste, construction and demolition waste, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid waste, other discarded solid, liquid and semisolid waste from a wastewater treatment plant, water supply treatment plant or air pollution control facility or other discarded containerized gaseous material resulting from industrial, commercial, mining or agricultural operations, or community activities; but not including hazardous waste; solid or dissolved material in domestic sewage; solid or dissolved material in irrigation return flows; industrial discharges that are point sources subject to permits under 33 U.S.C.A. §1342; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42, U.S.C.A. §§2011, et seq.

Article II: Directives

2.01 – Monitoring Program

A. Subject to available funding, the Environmental Department shall establish a robust regulatory program to monitor and regulate air quality and air pollution within the Nation. This regulatory program shall enable the Nation to productively engage around activities that may result in adverse impacts on air quality on and around the Nation. The Environmental Department shall manage its air quality monitoring program to ensure that the Tribe's Class 1 Airshed as recognized under the Federal Clean Air Act is protected and preserved, and that off-Reservation sources of air pollutants do not adversely affect air quality on the Yavapai-Apache Nation.

B. The Environmental Department may engage in the following activities related to its monitoring program.

- i. Compile and review historical data on the air quality within and around the Yavapai-Apache Nation; develop a format for an air quality inventory; and enter data of acceptable quality into that inventory;
- ii. Determine gaps in existing data and create an air quality monitoring program, including recommendations to the Tribal Council about whether to apply for special designations or programs available to Tribes under the federal Clean Air Act;
- iii. Oversee field collection and laboratory analysis of samples, and reporting of air quality data
- iv. Compile a Standard Operating Procedures manual for air quality monitoring procedures and a Quality Assurance Project Plan that outlines the Quality Assurance/Quality Control requirements for collecting and analyzing air quality data;
- v. Obtain and operate appropriate devices or systems necessary to monitor, compile, and analyze the quality of the Reservation's ambient air and determine whether that quality attains the National Ambient Air Quality Standards prescribed in the Federal Clean Air Act.

C. The Environmental Department's monitoring shall include, but shall not be limited to, monitoring the impact of emissions from on and off-reservation sources. Monitoring and analysis activities shall be performed in accordance with EPA's Quality Assurance/Quality Control guidance.

Article III: Burning on the Reservation

3.01 – Burn Permits

A. Except as provided in Title VII, Article III §3.02, all persons engaging in an open burning activity shall obtain an open burning permit from the Environmental Department.

B. The provisions of Title II, Article IV shall govern the issuance of burn permits.

3.02 – Exemptions to Burn Permit Requirements

A. The general prohibition on open burning in Title VII, Article IV and the permitting requirements of Title VII, Article III shall not apply to burning by a Tribal member for cultural, traditional, or spiritual purposes provided that such burning:

- i. Is conducted in a safe manner and does not endanger public health or safety on the Reservation;
- ii. Does not contain any materials prohibited under this Title.
- iii. Is not subject to a burn ban.

B. The general prohibition on open burning in Title VII, Article IV and the permitting requirements of Title VII, Article II shall not apply to an open burning activity that is less than four feet in diameter and less than three feet in height, so long as such open burning activity:

- i. Is attended at all times;
- ii. Burns only materials that have been kept as dry as practicable;
- iii. Burns only materials that have been separated from non-combustible materials as much as practicable;
- iv. Is capable of being immediately extinguished;
- v. Is not allowed to smolder;
- vi. Is extinguished when the burn is complete;
- vii. Is contained within a fire ring, barbeque, or similar structure.

viii. Does not contain any materials prohibited under this Title

3.03 – Open Burning Notification, Attendance, and Inspection

A. All persons engaging in an open burn pursuant to a permit issued under Title II, Article IV, shall comply with any request by the Environmental Department to inspect the open burning site prior to ignition.

B. In the event that the permitted activity involves burning of a structure on the Reservation, a representative from the Environmental Department and/or the local fire department must be present during the burn.

C. The burn permit holder must attend the burn at all times, and must fully extinguish the burn when the burn is complete.

3.04 – Burn Bans

A. The Environmental Department is authorized to declare a burn ban if, in their best judgment, or in consultation with EPA personnel, state or local officials, and/or the United States Forest Service, the Environmental Department determines that a burn ban is necessary to protect air quality on the Reservation and/or to protect life, property and the natural environment from fire hazards for any of the following reasons:

i. Measured or predicted concentrations of any air pollutant in the ambient air on the Reservation exceed any of the NAAQS.

ii. Meteorological conditions indicate impaired air quality conditions on the Reservation;

iii. Moisture levels in biomass on the Reservation indicate a high fire danger.

iv. Meteorological conditions indicate high winds that increase the risk of wildfires due to high fire danger.

B. The Environmental Department may limit the geographical scope of a burn ban to areas on the Reservation where air quality is impaired or there is a high fire danger.

C. The Environmental Department shall provide notice of a burn ban by placing a sign by the side of each main road providing access to the

Reservation, posting notice on the Environmental Department's website, and by sending notice to all Tribal departments.

D. Unless otherwise specified by the Environmental Department, open burning for ceremonial purposes, campfires, or cooking may be commenced or continued during a burn ban provided such open burning is less than four feet in diameter, less than three feet in height, and contained within a fire ring, barbeque, or similar structure.

Article IV: Prohibitions

Any violation of the provisions listed in Title VII, Article IV, §4.01 – 4.06 shall result in the issuance of a Notice of Violation.

4.01 – General Prohibition on Open Burning

No person shall cause or allow open burning on the Reservation unless the open burning activity is either exempt pursuant to Title VII, Article III §3.02 or the person conducting the burn has been issued a burn permit pursuant to Title II, Article IV.

4.02 – Prohibited Materials

A. Except as provided in this Section, no person shall burn or allow the burning of the following materials within the Reservation:

1. Structures, except as authorized in writing by the Environmental Department or Tribal Council, and attended by a member of the Environmental Department or local fire department.
2. Garbage;
3. Dead animals or parts of dead animals not used for food, unless pursuant to the lawful order of a public health official;
4. Junked motor vehicles or any materials resulting from a salvage operation;
5. Tires or rubber materials or products;
6. Plastics, plastic products, or styro-foam;
7. Asphalt or composition roofing, or any other asphaltic material or product;

8. Tar, tarpaper, petroleum products, or paints;
9. Lumber or timbers treated with preservatives;
10. Construction debris or demolition waste;
11. Pesticides, herbicides, fertilizers, or other chemicals;
12. Insulated wire;
13. Batteries;
14. Light bulbs;
15. Materials containing mercury (e.g., thermometers);
16. Asbestos or asbestos-containing materials;
17. Pathogenic wastes;
18. Any hazardous wastes and hazardous materials.
19. Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned;
20. Used fireworks and associated packaging

4.03 – Burning During Burn Bans

Except as provided in this Title, no person shall commence or continue an open burning activity on the Reservation during a burn ban issued by the Environmental Department.

4.04 – Defacement

No person shall destroy, tear down, deface, or erase any printed matter or signs placed or posted by or under the instructions of the Environmental Department or Tribal Council to assist in the enforcement of this Title.

4.05 – Attendance

No burn permit holder shall leave the permitted burn unattended.

4.06 – Extinguishment

The burn permit holder must fully extinguish the burn when the burn is complete.

Title VIII – Natural Resources

Article I: Definitions

As used in this Title, the following terms shall have the following meanings:

“Endangered Species” means any species of fish, wildlife, or plant which has been determined to be endangered under Section 4 of the Endangered Species Act as amended; listed species are found in 50 CFR §17.11-17.12.

“Fishing” means catching, taking, or attempting to catch or take, any species of fish, including all related activities which occur in or on the water, or immediately adjacent to the waters’ edge and in the process of loading or unloading fish, nets, or related gear, in or from a boat or vehicle.

“Hunting” means shooting, shooting at, chasing, driving, flushing, attracting, brushing, pursuing, trapping, stalking or lying in wait for any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for or lying in wait for any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures or making sound recordings thereof.

“Invasive Species” means animals and plants that are not native to the lands of the Yavapai-Apache Nation and the Traditional Lands of the Yavapai and Apache Tribes and that pose a serious potential threat to native wildlife or habitat. Potential threats include: disease, competition for existing habitat, inter-breeding and potential genetic contamination. Invasive species include, but are not limited to, salt cedar, giant reed, Russian olive, and tree of heaven.

“Verde River Riparian Conservation Corridor” means the area designated by Tribal Council Resolution Number 46-2006 (June 15, 2006), A Resolution Confirming and Declaring a Riparian Conservation Corridor and Management Plan for the Verde River, and constituting the undeveloped Reservation lands on both sides of the Verde River beginning at the center of the river and extending outward for three hundred (300) lateral feet on either side of the bankfull stage of the Verde River.

“Shining” or **“Spotlighting”** means the use of artificial light to locate wild animals while in the possession of a firearm or bow and arrow, or cross-bow.

"Taking" means pursuing, hunting, netting, (including placing or setting any net or other capturing device), fishing, killing, capturing, snaring, or trapping wildlife or attempting any of the foregoing.

"Wildlife" means all fish, birds, mammals, amphibians, reptiles, aquatic invertebrates, and insects, including their eggs or gametes and all life stages, located on the Yavapai-Apache Nation or migrating to the Yavapai-Apache Nation, excluding domestic animals.

Article II: Directives

2.01 – Species Management

A. In its management decisions, the Environmental Department shall promote the protection and enhancement of culturally significant, threatened, endangered and protected species. This shall include, but is not limited to, enacting protections for culturally significant, threatened, endangered and protected species as it deems necessary to protect the Nation and its resources.

B. It is the policy of the Nation that the Nation is in the best position to protect threatened and endangered species that occur on its own lands, and the Nation shall continue to exert its full authority to do so. The United States Fish and Wildlife Service and other federal agencies should consult with the Nation as early in advance as possible around federal actions related to threatened and endangered species on or around the Nation in order to minimize and avoid any adverse results on the Nation or the species that live therein.

C. The Environmental Department shall manage invasive species to support the preservation of native species and the overall protection of threatened or endangered species

D. The Environmental Department shall develop and implement integrated invasive species management actions and programs authorized by this section, including rapid response, early detection and monitoring, prevention, containment, control, and eradication.

2.02 – Riparian Corridor Management

A. All activities that potentially affect the riparian conservation corridor shall be controlled within both the riparian conservation corridor and outside of the riparian conservation corridor as necessary to prevent adverse impacts.

B. Development, grazing, and mining shall not be authorized in the riparian conservation corridor except where it can be demonstrated through environmental review pursuant to Title III that:

- i. The impact is both unavoidable and necessary;
- ii. Unavoidable and necessary impacts are minimized, and any remaining impacts are offset through the deliberate restoration, creation or enhancement (“restoration”) of riparian ecosystem of equivalent or greater resource value, including acreage and function;
- iii. The restored, created or enhanced riparian ecosystem will be as persistent as the original riparian conservation corridor ecosystem it replaces; and
- iv. The applicant demonstrates sufficient scientific expertise, supervisory capability and financial resources to carry out the proposed restoration activity.

D. Best management practices shall be applied in the Riparian Conservation Corridor as follows:

- i. The use of herbicides and pesticides shall be prohibited in the removal of noxious plants in the riparian conservation corridor except where no reasonable alternatives exist and the Environmental Department, in consultation with other departments as needed, finds that such activity is in the public interest.
- ii. Mechanical removal of noxious plants shall be timed and carried out in a manner to minimize any disruption of wildlife or habitat.
- iii. Restoration of any part of the riparian conservation corridor that has been disturbed or degraded shall use native plant materials with a diversity and type similar to that which originally occurred within the corridor.
- iv. Stabilization of exposed erosion prone surfaces along riparian areas, including but not limited to river and stream systems shall, wherever feasible utilize soil bioengineering techniques. (e.g. stabilization using vegetation and other natural mechanisms)
- v. The use of commercial nursery stock in the restoration of disturbed or degrading shorelines shall emulate natural, native vegetation in size, structure and diversity.
- vi. The use of off-road recreational vehicles shall be prohibited in the riparian conservation corridor at all times.

2.03 – Hunting, Fishing, and Overnight Use Zones

A. Subject to Tribal Council approval, the Environmental Department may designate certain areas on the Reservation as “member hunting zones,” “fishing zones,” and “overnight use zones,” which shall be locations where the Environmental Department finds that allowing hunting, fishing, and overnight camping is in the best interest of the Nation. The Environmental Department may apply such restrictions on these uses as it finds are in the best interest of the Nation, including establishing hunting seasons for member hunting.

B. The provisions of Title VIII, Article III and Article IV shall apply to all activities within the fishing and hunting zones.

Article III: Permit System

3.01 – Hunting, fishing, camping, and gathering by members.

A. Hunting by Nation members with a valid and current enrollment card shall be permitted in any “member hunting zone” designated by the Environmental Department.

B. Fishing by Nation members with a valid and current enrollment card shall be permitted in any “fishing zone” designated by the Environmental Department.

C. Camping by Nation members with a valid and current enrollment card shall be permitted in any “overnight use zone.”

D. Nation members shall keep their enrollment card with them at all times when hunting, fishing, or camping on the Reservation.

3.02 – Non-Member Hunting

Non-members shall not be allowed to hunt on the Reservation.

3.03 – Non-Member Fishing Permits

Non-members may only fish on the Reservation if the non-member has a valid and current fishing license issued pursuant to Title II.

3.04 – Camping and Overnight Use Permits

A. Non-members may only camp on the Reservation if the non-member has a valid and current camping permit issued pursuant to Title II.

B. Title VIII, Article III, §3.04(A) shall not apply to camping in the yard of a Yavapai-Apache Tribal member's residence.

C. If a non-member is staying in a Nation RV Park or Nation established commercial campsite, has paid all fees, and has complied with all applicable rules and regulations, then Title VIII, Article III, §3.04(A) and Title II shall not apply.

Article IV: Prohibitions

Any violation of the provisions listed in Title VIII, Article IV, §4.01 – 4.07 shall result in the issuance of a Notice of Violation.

4.01 – Permits

No person shall hunt or fish without a permit or in violation of permit terms, or, in the case of Nation-members, unless they are in possession or can produce a valid and current enrollment card.

4.02 – Intoxication

No person shall hunt or fish while under the influence of intoxicating liquor or drugs.

4.03 – Illegal Take and Prohibited Practices

A. No person shall take, kill, hunt, fish, pursue, shoot at, disturb, destroy, transport, possess, process, purchase or sell any endangered and threatened species as defined in Title VIII, Article I.

B. No person shall take, capture, or kill or attempt to take, capture or kill any wild animal or fish with the aid of dynamite, poison, electrical charge, explosive device, or poisonous or stupefying substance.

C. No person shall use, set, lay or prepare in the Verde River or the riparian conservation corridor any lime, poison, fish berries, or any other substance deleterious to fish or riparian life.

D. No person shall shine, spotlight or otherwise use any use of artificial light to hunt nocturnal animals.

4.04 – Use of Firearms Outside of Hunting Zones

No person shall discharge firearms for the purpose of hunting within any residential area; within 500 feet of any school, clinic, community center, public building, resort or casino; or across, along or near public roads and highways; or outside of designated member hunting zones.

4.05 – Exotic or Nonnative Species Introduction

No person shall introduce or cause to be introduced exotic or nonnative plant or animal species into the Verde River or the Riparian Conservation Corridor.

4.06 – Off-Road Vehicle Use

No person shall use an off-road vehicle in the Riparian Conservation Corridor including, but not limited to, using such a vehicle to cross the Verde River.

4.07 – Defacement

No person shall destroying, tear down, deface, or erase any printed matter or signs placed or posted by or under the instructions of the Environmental Department or Tribal Council to assist in the enforcement of this Title.

Title IX - RESERVED

Title X – Environmental Code Enforcement

Article I: Civil Enforcement for Persons other than the Yavapai-Apache Nation

1.1 – Enforcement Policy

It is the policy of the Nation to encourage informal, practical, results-oriented resolution of alleged violations and actions needed to prevent damage to the Nation's environmental and natural resources or harm to the health, safety, and welfare of the Nation's citizens. It is also the policy of the Nation, consistent with the principles of due process, to provide effective procedures for enforcement.

1.02 – Exhaustion

All applicable administrative remedies within the Environmental Department must first be exhausted before judicial relief is sought before the Tribal Court under Title X, Article IV.

1.03 – Warning

A. If any person, business, or entity, other than the Nation, has violated or is in violation of any provision of the Environmental Code, or any requirement of a permit or contract issued pursuant to the Environmental Code, any person listed under Title I, Article II §2.04 as having authority to enforce the Environmental Code has the discretion to issue a Warning.

B. A Warning issued under this Title shall state with reasonable specificity the nature of the violation; the requirement, provision, or section of this Code alleged to have been violated; a reasonable time for compliance or cure, if applicable; and what future fees would apply if the violation continues.

C. The maximum number of Warnings allowed to be issued for an ongoing or repeated violation is two; after the issuance of two Warnings for an ongoing or repeated violation, a Notice of Violation must be issued.

1.04 – Notice of Violation

A. If any person, business, or entity, other than the Nation, has violated or is in violation of any provision of the Environmental Code, or any requirement of a permit or contract issued pursuant to the Environmental Code, any person

listed under Title I, Article II §2.04 as having authority to enforce the Environmental Code may issue a Notice of Violation. The Notice of Violation shall be transmitted to the alleged violator by certified mail, return receipt requested, by personal service, or by any means authorized by the federal rules of civil procedure for serving a civil complaint.

B. A Notice of Violation issued under this Title shall state with reasonable specificity the nature of the violation; the requirement, provision, or section of this Code alleged to have been violated; a reasonable time for compliance or cure, if applicable; any fee, if applicable; and shall state that the alleged violator is entitled to appeal the Notice of Violation to the Nation's Tribal Court within 30 days after the date of issuance of the Notice of Violation.

C. An uncured Notice of Violation becomes final, enforceable, and non-appealable in the Nation's Tribal Court at the end of the cure period, unless, within 30 days of receipt of the Notice of Violation, the alleged violator appeals to the Nation's Tribal Court accordance with Title X, Article I, §1.08. If the violator appeals within 30 of receipt of the Notice of Violation, the Notice of Violation does not become final until the Nation's Tribal Court has held a hearing and issued a final decision pursuant to Title X, Article IV, §4.02(G).

D. Any person to whom a final and enforceable Notice of Violation is issued shall be liable for any civil penalty issued by the Environmental Department.

1.05 – Opportunity to Cure

A. If the violation is curable, the Notice of Violation shall contain a provision notifying the violator of the opportunity to cure.

B. Within 5 business days of receiving the Notice of Violation, the violator must submit a written plan to cure the violation to the Environmental Department.

C. The Environmental Department shall have up to ten business days from receiving the cure plan to approve, reject, or set conditions upon its approval of the plan, and shall provide a reasonable timeframe in which a cure must be completed to avoid a financial penalty, injunction, exclusion or other civil remedy.

C. If the violator acts to cure the offense, the violator shall notify the Environmental Department in writing of the completed cure prior to the expiration of the cure period.

D. Within five business days of receiving notice of a completed cure, the Environmental Department shall conduct a site inspection and provide written notice to the violator of whether the cure is acceptable to bring the violator into

compliance with the Environmental Code or whether the Notice of Violation is still in effect.

1.06 – Additional Opportunities to Cure

A. If the first attempted cure is not sufficient to bring the violator in compliance with the Environmental Code, but was made in good faith by the violator, the Environmental Department may provide written notice of an additional opportunity for the violator to cure the offense before the Notice of Violation becomes final and enforceable.

B. Within 5 business days of receiving written notice of an additional opportunity to cure, the violator must submit a written plan to cure the violation to the Environmental Department.

C. The Environmental Department shall have up to ten business days to approve, reject, or set conditions upon its approval of the plan.

D. The Environmental Department may provide as many additional opportunities to cure as it sees fit for up to 365 days from the first Notice of Violation.

E. With each subsequent attempt to cure, the violator and Environmental Department must follow the notice protocols of Title X, Article I §1.06 (B) and (C).

1.07 – Emergency Orders

A. Notwithstanding any other provision of this Title, if the Environmental Department determines that noncompliance with the Environmental Code is presenting an imminent and substantial threat to the public health, welfare, or environment and determines, in consultation with the Nation's Attorney General, that it is not practicable to assure prompt protection of the public health, welfare, or environment through a Notice of Violation, the Environmental Department may issue such emergency orders as may be necessary to protect the public health, welfare, or environment. Any such order shall be effective immediately upon issuance and shall remain in effect for a period not to exceed sixty (60) days.

B. If the violator refuses to obey the emergency order, the violator shall be liable for a fee of up to \$1000 per day, as determined by the application of the penalty assessment criteria in Title X, Article II, §2.01(D), for each day of the violation. Vehicles and equipment used to commit acts which violate any provision of this Title are subject to confiscation and impoundment.

C. In the event the violator does not pay all applicable fines necessary to release the any property confiscated and impounded pursuant to Title X, Article I, § 1.07(B) within fourteen days from the date of such confiscation and impoundment, the Nation may forfeit the property and the reasonable value of said vehicles and equipment may be used to offset fines or penalties which may be assessed by the Environmental Department. If the forfeited property's value exceeds the amount of fines and penalties, the difference shall be remitted back to the violator.

1.08 – Appeal of Notice of Violation

A. The recipient of a Notice of Violation is entitled to appeal the Notice of Violation to the Nation's Tribal Court within 30 days after the date of issuance of the Notice of Violation by submitting a written appeal.

B. An appeal of a Notice of Violation must include the following:

- i. Name and contact information for Parties, including address, phone number, and email address of appellant.
- ii. Notice of Violation case number
- iii. A copy of the Notice of Violation
- iv. A statement of issues detailing the reasons for the appeal
- v. The appellant has the option to submit any documents, photographs, or records relevant to the appeal.

C. Title X, Article IV, §4.02 shall govern the process of all appeals of Notice of Violation in Tribal Court.

D. If the recipient of an uncured, final and enforceable Notice of Violation does not appeal the Notice of Violation to the Nation's Tribal Court within 30 days after the issuance of the Notice of Violation, there shall be no further options to appeal or challenge the Notice of Violation and the recipient shall be liable for all administrative civil penalties and other penalties resulting from the violation.

Article II: Administrative Civil Penalties for Persons other than the Nation

2.01 – Administrative Civil Penalties

A. Any person, other than the Nation, subject to a final and enforceable Notice of Violation shall be subject to an administrative civil penalty of up to \$1000 per day, as determined by the application of the penalty assessment criteria in Title X, Article II, §2.01(D) below, for each day of violation. Vehicles and equipment used to commit acts which violate any provision of this Title are subject to confiscation and impoundment.

B. In the event the violator does not pay all applicable fines necessary to release any property confiscated and impounded pursuant to Title X, Article II, § 2.01(A) within fourteen days from the date of such confiscation and impoundment, the Nation may forfeit the property. The reasonable value of said vehicles and equipment may be used to offset fines or penalties which may be assessed by the Environmental Department. If the forfeited property's value exceeds the amount of fines and penalties, the difference shall be remitted back to the violator.

C. Each day that a violation for which a civil penalty may be assessed constitutes a separate offense. Where there is no opportunity to cure, the penalty period shall begin on the day the Notice of Violation is issued. Where there is an opportunity to cure, the penalty period shall begin on the day following the final day of the cure period.

D. In determining the amount of a civil penalty under this Title, the Department shall consider the following factors: (1) the seriousness of the violation; (2) the economic impact of the penalty on the violator; (3) the violator's full compliance history and good faith efforts to comply; (4) the duration of the violation as established by any credible evidence; (5) payment by violator for any penalties previously assessed under this Title; and (6) the economic benefit of non-compliance.

E. In the event that a recipient of a final and enforceable Notice of Violation fails to pay the assessed civil penalty, at the request of the Environmental Department, the Nation's Attorney General, following a legal assessment of the matter, may file an action in the Nation's Tribal Court pursuant to Title X Section §4.03 to recover the civil penalties provided for in this section.

Article III: Violations by the Nation

3.01 – Informal Resolution

In any case in which the Nation or any agency or department of the Nation is alleged to have violated the terms and conditions of a permit or to have conducted activities without a permit or to otherwise be in violation of the Environmental Code, the Environmental Department shall bring this matter to the attention of the Tribal Council who shall consider taking action to ensure compliance with this Code.

3.02 – Hearing to Develop Recommended Corrective Action

If the matter cannot be resolved informally, the Environmental Department shall conduct an enforcement hearing for the purpose of making factual determinations and issuing a decision recommending to the Tribal Council a

course of corrective action if necessary. The Tribal Council's determination of the matter shall be final and no appeal to the Tribal Court shall be allowed.

Article IV: Tribal Court Jurisdiction

The Yavapai-Apache Nation Tribal Court shall have exclusive jurisdiction to hear and decide all matters concerning the enforcement of this Code; provided, however, that nothing in this Title shall be construed to preclude prosecution in Federal Court under any applicable federal laws. Final decisions issued by the Tribal Court shall be final and shall not be appealed to the Nation's Court of Appeals. Nothing in this Environmental Code shall be construed by any court to constitute a waiver of the Sovereign Immunity of the Yavapai-Apache Nation or its elected officials, officers, employees, and agents acting within the scope of their duties.

4.01 – Applicability

The Tribal Court shall have jurisdiction over the following actions:

A. Appeal of the following final Nation decisions:

- i. The denial of a permit, the revocation or cancellation of a permit, or a significant revision to an existing permit;
- ii. The issuance of a Notice of Violation and associated civil penalty;
- iii. The issuance of an emergency order;
- iv. An action confiscating, impounding, or forfeiting property involved in an alleged violation of the Environmental Code.

B. Actions brought by the Nation's Attorney General arising out of violations of the Environmental Code that seek a preliminary injunction, a permanent injunction, civil judicial forfeiture, the enforcement of a Notice of Violation, the payment of administrative civil penalties, or any other relief provided by law.

C. Actions brought by the Nation's Attorney General at the request of the Environmental Department for exclusion of non-members from the Nation due to violations of the Environmental Code, as provided under the Nation's Exclusion Code.

4.02 – Procedure for Appeal of Final Nation Decisions

A. An action to appeal a final Nation decision may be commenced only by the following:

- i. A permit holder whose permit is denied or otherwise impacted by decision listed in Title X, Article IV, § 4.01(A)(i).

- ii. A recipient of a Notice of Violation and/or associated civil penalty;
- iii. The recipient of an Emergency Order or a person who was adversely and materially affected by the issuance of an Emergency Order.
- iv. A property owner whose property is confiscated, impounded, or forfeited by the Nation due to an alleged violation of the Environmental Code.

B. An action to appeal a final Nation decision shall be commenced by the affected party by filing an appeal in Tribal Court within 30 days from the date when a copy of the decision sought be reviewed is served upon the affected party. If an action is not filed in Tribal Court within 30 days from the date when a copy of the final Nation decision sought be reviewed is served upon the affected party, the Nation's decision shall be final and non-appealable.

C. Appeals submitted by parties listed under Title X, Article IV, § 4.02 A (i), (iii), (iv), and (v) shall include the following:

- i. Name and contact information for Parties, including address, phone number, and email address of appellant.
- ii. The case number, emergency order number or title, or permit number
- iii. Copies of all permits relevant to the appeal
- iv. If applicable, a description of the property at issue in the appeal
- iv. A statement of issues detailing the reasons for the appeal
- v. The appellant has the option to submit any documents, photographs, or records relevant to the appeal.

D. Appeals submitted by parties listed under Title X, Article IV, § 4.02 A (ii) shall submit appeals in accordance with the provisions of Title X, Article I, § 1.08.

E. A copy of any appeal shall be served as in civil actions by certified mail, return receipt requested, by personal service, or by any means authorized by the federal rules of civil procedure for serving a civil complaint.

F. Within twenty (20) days after service of the appeal, the appellant and the Nation shall:

- i. Appear at the time and place designated by the Tribal Court;
- ii. Respond to the contents of the appeal

G. As needed, the Tribal Court may set the matter for a hearing or briefing schedule. Unless otherwise scheduled by the Tribal Court, the hearing shall take place within 90 days of the service of appeal. The hearing shall be informal and without a jury. At the hearing, the appellant bears the burden of proof by a preponderance of evidence. If the appellant charged elects to be represented by counsel, the appellant shall notify the court at least ten days before the

hearing. If the Tribal Court finds in favor of the appellant, the court will enter an order dismissing the allegations and reversing the final action of the Nation that triggered the appeal. If the Tribal Court finds in favor of the Nation, the Court will enter judgment for Nation and, as appropriate, enforce any administrative civil penalties imposed pursuant to Title X, Article II.

H. If an appellant fails to appear at the time set by the Court, default judgment shall be entered for the Nation.

4.03 – Procedure for Actions brought by the Nation

A. At the request of the Environmental Department, the Nation’s Attorney General, following a legal assessment of the matter, may file an action in Tribal Court for a preliminary injunction, a permanent injunction, civil judicial forfeiture, the enforcement of a Notice of Violation or any other relief provided by law, if the Department demonstrates reasonable cause to believe any of the following is occurring:

- i. A person has violated or is in violation of any provision of the Environmental Code, or any provision of a permit issued under the Environmental Code;
- ii. A person is disregarding a final and enforceable Notice of Violation;
- iii. A person has failed to pay fees or penalties associated with a final and enforceable Notice of Violation;
- iv. A person is creating an imminent and substantial endangerment to the public health or environment.

B. A copy of any summons and complaint shall be served as in civil actions by certified mail, return receipt requested, by personal service, or by any means authorized by the federal rules of civil procedure for serving a civil complaint.

C. Within twenty (20) days after service of summons and complaint, the persons served shall:

- i. Appear at the time and place designated by the Tribal Court;
- ii. Admit or deny the allegations of the complaint

D. As needed, the Tribal Court may set the matter for a briefing or hearing schedule. Unless otherwise scheduled by the Tribal Court, the hearing shall take place within 90 days of the service of summons and complaint. The hearing shall be informal and without a jury. At the hearing, the Nation is

required to prove the violation charged by a preponderance of the evidence. If the person charged elects to be represented by counsel, the person shall notify the court at least ten days before the hearing. If the Tribal Court finds in favor of the person, the court will enter an order dismissing the allegations. If the Tribal Court finds in favor of the Nation, the Tribal Court will enter judgment for Nation and, as appropriate, enforce injunctive relief and/or the payment of civil penalties imposed pursuant to Title X, Article II.

E. If a person served with a civil summons and complaint fails to appear at the time set by the Tribal Court, the allegations in the complaint are deemed admitted and default judgment shall be entered for the Nation.

4.04 – Procedure for the Actions by the Nation Seeking Issuance of Court Orders or Civil Warrants

A. Where the Environmental Department seeks an order for an investigation, pursuant to Title I, Article II, §2.06 (C), it shall submit a signed affidavit providing a statement of issues detailing the reasons for the petition to compel production or initiate a search of property.

B. The Tribal Court shall issue an order if it finds that the facts and circumstances detailed in the affidavit establish sufficient evidence that a reasonable person would believe that the alleged violator is committing or has committed a violation of the Environmental Code.

C. The warrant shall specify the location and items to be searched.

4.05 – Procedure for Actions Seeking Exclusion of Non-Members

A. In the event that a non-member commits repeated violations of the Environmental Code that exhibit indifference to human life and safety or commits a grossly negligent violation of the Environmental Code, the Attorney General and/or Environmental Department may petition the Tribal Court for the violator to be excluded from the Nation.

B. The Nation's exclusion code shall govern any requests made by the Attorney General and/or Environmental Department pursuant to Title X, Article IV, § 4.05(A).

