**Tohono O'odham Nation Solid Waste Management Code**

**CHAPTER 3. SOLID WASTE REGULATORY OFFICE**

Section 301. Establishment of the Solid Waste Regulatory Office. There is hereby established within the Executive Branch of the Nation a Solid Waste Regulatory Office (SWRO). The staff of the SWRO shall include one or more inspectors whose duties shall include the monitoring of the production, collection, transportation and disposal of solid waste and hazardous waste on lands of the Nation, and the citation of violators of this Code.

Section 302. Powers and Duties of the Solid Waste Regulatory Office.  The SWRO shall have the following powers and duties:

1. To develop solid waste laws for presentation to the Legislative Council for approval;
2. To issue regulations in compliance with this Code and which are necessary or beneficial to the purposes of the Code;
3. To implement, administer and enforce this Code and any other solid waste laws and regulations of the Nation;
4. To prepare and inventory with a list of the locations of all sites on the lands of the Nation where solid waste has been disposed, and a plan to close all sites in compliance with federal law and the laws of the Nation;
5. To implement the Solid Waste Management Plan (“Plan”) adopted by the Legislative Council pursuant to section 501 of this Code;
6. To implement the plan for closure of open dumps;
7. To create a system of permits for the collection, transportation, storage or disposal of solid waste and hazardous waste on lands of the Nation, establishing categories of permits, fee schedules, and exemptions;
8. To regulate the activity of entities which have been issued a permit to collect, transport, store or dispose of solid waste or hazardous waste on lands of the Nation;
9. To monitor, test or inspect any facility on lands of the Nation involved with the collection, transportation, storage or disposal of solid waste or hazardous waste, and to require the production of information, records and reports by an owner or operator;
10. To enter on or into any site or premises subject to a permit under this Code or in which records relevant to the operations of regulated facilities or activities are kept;
11. To investigate any reports of violations of this Code, to issue notice of violation, and collect cite violators of this Code into Tohono O’odham Judicial Court (“Court”)
12. To assess and collect civil penalties, to require remedial action, and to revoke, suspend or modify permits issued under this Code upon such terms and conditions as the SWRO may determine appropriate;
13. To issue orders to enforce permit requirements;
14. To issue emergency restraining orders in response to an activity or threatened activity involving solid waste or hazardous waste which may present an imminent and substantial endangerment to health or the environment; and
15. To exercise such other powers and duties related to solid waste regulation as are described in Chapter 7 and Chapter 9 of this Code and as shall from time to time be given to the SWRO by the Legislative Council.

Section 303. Regulations Issued by the Solid Waste Regulatory Office

1. The SWRO may from time to time issue regulations governing any aspect of its responsibilities under this Code which so long as they are in furtherance of and not in conflict with any provision of this Code, shall have the force of law. Without limitation, the matters to be addressed by such regulations may include the following:
2. The standards and procedures to be followed by applicants for permits, including the information to be provided by the applicant necessary for adequate assessment of the applicant’s background, the manner in which such applications will be processed, and any fees to be paid by permit applicants;
3. The standards and procedures to be followed for closure of open dumps;
4. The standards and procedures for use of the solid waste bins;
5. The standards and procedures to be followed for any recycling or household hazardous waste collection programs;
6. The standards and procedures for the disposal of construction debris.
7. Except in emergency situations addressed tin the subsection (c) below, prior to issuing a final regulation the SWRO shall publish the regulation in proposed form. The proposed regulation shall be provided directly to the Chairman of the Nation, all members of the Legislative Council, the Office of the Attorney General, the office of each District Chairperson, the environmental health offices of the Indian Health Service and the Bureau of Indian Affairs, and, upon written request, to any other interested person or interested office or agency of the Nation. The proposed regulation shall be accompanied by a notice station that the SWRO will accept written comments for no less than thirty (30) days following the date of publication. As provided in this section, “publish” shall mean publication in newspaper(s) of general circulation within the Nation and posting in each of the Nation’s District offices. In the event of significant public interest with respect to any regulation, the SWRO may hold one or more public hearings prior to issuing a final regulation. Notice of such hearing(s) shall be given as set forth above, and in addition shall be mailed directly to any person submitting comments on the proposed regulation. Except as provided in subsection (c) below, no final regulation shall be issued until the SWRO has reviewed all comments received by the close of the comment period, as well as all presentations made at any hearing(s) held pursuant to this subsection.
8. In the event the SWRO determines that an immediate rule-making is necessary to avoid serious jeopardy to the health, safety and welfare of the Nation, or otherwise to deal with an emergency situation affection the responsibilities of the SWRO, the SWRO shall, upon making an express written finding as to such emergency, issue a final regulation to take effect immediately; provided that the SWRO shall publish notice and request comments on such regulation in the same manner as Is provided above, and upon consideration of any comments received, shall make such amendments to such regulation as the SWRO deems appropriate.

 Section 603. Responsibility for Storage, Disposal and Transportation of Solid Waste and Hazardous Waste.

1. Any person generating, storing, handling, transporting or disposing of solid waste or hazardous waste shall be responsible for the proper storage, removal, transport and disposal of that solid waste or hazardous wasted until it is lawfully deposited in an approved site or collection by the Nation, an authorized District, or an agent authorized by the Nation or a District to collect solid waste or hazardous waste.
2. When solid waste or hazardous waste is generated, stored, handled or disposed of upon leased premises, both the lessor and the lessee are responsible for compliance with the provisions of this Code.
3. The private landowner, homeowner, business operator, lessor, lessee or occupant (hereafter collectively referred to as “occupant”) of any premises shall be responsible for the sanitary condition of the premises litter, refuse or other solid waste or hazardous waste and to properly store solid waste or hazardous waste upon the premises.
4. If solid waste or hazardous waste is disposed of in violation of this Code, and three or more items in the solid waste or hazardous waste identify the same person as the owner or recipient of that its, there shall be a presumption that the person so identified is responsible for the unlawful disposal of the solid waste or hazardous waste.
5. Any person who by contract, agreement or otherwise arranges for the recovery, transport, disposal or dumping of solid waste or hazardous waste on lands of the Nation is responsible for complying with the provision of this Code.

**CHAPTER 7. ENFORCEMENT AND PENALTIES**

Section 701. Enforcement.

1. Inspectors certified by the SWRO in accordance with standards to be adopted by the SWRO shall be authorized to investigate reports of violation of this Code made by any person.
2. Notice of Violation. The inspector shall issue a written notice of violation to the person responsible for the violation in common and concise language, a citation to the section of this Code or a regulation which was violated, an order to clean up the unauthorized dumping or otherwise correct the deficiency, a statement that failure to do so within 30 days, of receipt  of the notice of violation will subject the violator to a citation into Court, and a statement of the penalties which may be imposed it the violation is not corrected.
3. Citation into Court. When an inspector determines that a violator has failed to comply with the terms of the notice of violation within 30 days, the inspector shall issue a citation into Court in the name of the Nation. The citation shall be served on the violator in accordance with the rules of the Court for service of civil process. The Office of the Attorney General contained in the Statute Creating the Office of the Attorney General, adopted by Resolution No. 326-89, and as subsequently amended by resolution no. 91-500
4. Administrative Penalties. If the violator fails to comply with any order in the notice of violation, the inspector shall have the discretion to refer the violation to the supervisor of the SWRO for imposition of an administrative penalty, in settlement of the claims made in the notice of violation, instead of filing a citation into Court. Administration penalties may include financial penalties in accord with section 702(a)(2) or performance of community service. Any financial penalties received by the supervisor of the SWRO shall be paid into the Nation’s Environmental Trust Fund referred to in section 703.

Section 702. Penalties.

1. Civil Penalties. Upon a determination by the Court, based on a preponderance of the evidence, that the person committed the violation alleged in the citation, the violator shall be subject to any one or a combination of the following orders or civil penalties:
2. Injunction, including an order to clean up or remediate unauthorized dumping;
3. A civil penalty in an amount not to exceed Twenty-Five Thousand Dollars ($25,000) for each day each violation occurs;
4. Reasonable attorneys’ fees and costs; and
5. Compensatory damage to the land or natural resources of the nation, and for the seasonable costs actually incurred or to be incurred by the Nation, and for the reasonable cost actually incurred or to be incurred by the Nation for cleaning up any solid or hazardous waste or abating the effects of the conduct complained of.
6. Community Service. The Court in its discretion may order performance of community service in lieu of payment of a financial penalty or may grant a request by violator to perform community service in place of payment of the financial penalty.
7. No Limitation of remedies. Any civil penalties or damages under this section are in addition to, and do not supersede or limit, any other remedies which may be available to the Nation.

**CHAPTER 9. PERMITS FOR COLLECTION, TRANSPORTATION AND LANDFILL OPERATION**

Section 901. Collection and Transportation. Any person, including the Program, which is involved in collection or transportation of solid waste or hazardous waste on lands within the boundaries of the Nation, must apply to the SWRO for a permit, provided that any individual member of the Nation wishing to transport solid waste from his or her own household to an authorized solid waste landfill is permitted to do so without a permit from the SWRO so long as such transporting does not scatter debris on the roadways of the Nation. The permit shall provide for the classes of vehicles to be used, the routes and locations to be serviced, the fee schedule for solid waste pick up and use of the bins, the fee to be paid for a permit, a system to document proper disposal in authorized solid waste landfills, the right of the SWRO to inspect vehicles and bins and to enforce compliance with the Plan and the Code, and any other matters that are within the powers of the SWRO to enforce.

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