

HEALTH AND SAFETY CODE

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ARTICLE VIII. DISPOSAL OF SOLID WASTE

[Note: Except as otherwise noted, the provisions of Article VIII of the Health and Safety Code were enacted on May 23, 1997 by Ordinance 97-1, effective on July 1, 1997; amended on August 9, 2002, by Ordinance 02-141 effective August 9, 2002.]

CHAPTER 1. GENERAL PROVISIONS

Section 11-8101. Title.

This Ordinance, as set forth in this Article VIII, shall be known and cited as the “Disposal of Solid Waste Code of the Colorado River Indian Tribes,” or the “Solid Waste Code.”

Section 11-8102. Purpose; Tribal Council Findings.

(a) This Article is adopted by the Tribal Council of the Colorado River Indian Tribes pursuant to Article VI, §1(v) of the Tribal Constitution. The purpose of this Article is to protect the health and safety and promote the welfare of the people of the Colorado River Indian Tribes and surrounding communities and to protect the environment by establishing minimum standards for the disposal of solid waste.

(b) In adopting this Article, the Tribal Council of the Colorado River Indian Tribes finds that the provisions of this Solid Waste Code are designed to prevent the wide-scale dumping of solid waste and the pollution of its Reservation.

(c) The Tribal Council finds that this Code does not apply to the following activities which are part of the usual operation of a residential household:

- (1) the incineration of residential trash, including, but not limited to, household trash, lawn clippings and tree branches; and
- (2) the burying of household pets.

Unless specifically excepted, this Solid Waste Code applies to other activities of a residential household as set forth herein.

(d) The Tribal Council finds that the provisions of this Solid Waste Code are not designed to interfere with traditional burial practices.

[As amended, August 9, 2002, by Ord. 02-141.]

Section 11-8103. Definitions.

(a) “Agricultural Waste” means waste resulting from agricultural operations, including but not limited to crop stubble and stem trash. Solid waste generated as a result of office operations, or ordinary household operations conducted incident to an agricultural operation and yard waste such as leaves, grass clippings, garden debris, and smaller chip branches are specifically excluded from this definition. Nor shall

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anything in this Article be construed so as to modify or annul any provision in the Tribes' Pesticide Code.

(b) "Approved Site" means sites designated by Tribal Council as acceptable for the collection and/or disposal of solid waste.

(c) "Construction and demolition waste" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

(d) "Disposal" means the discharge, abandonment, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(e) "Disposer" means any person who discharges, abandons, deposits, injects, dumps, spills, leaks, or places or any person who causes to be discharged, abandoned, deposited, injected, dumped, spilled, leaked or placed any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(f) "Enforcement Officers" means those individuals or departments who are herein authorized by the Tribal Council of the Tribes to enforce this Article.

(g) "Garbage" means all kitchen and table food waste and animal or vegetable waste that attends or results from the storage, preparation, cooking, or handling of food-stuffs as well as ordinary residential household wastepaper and discardable items but does not mean agricultural waste, hazardous waste, industrial waste, infectious waste, or sludge.

(h) "Generator" means any person who generates solid waste or any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of solid waste owned or possessed by such person, or by any other person or entity.

(i) "Hazardous waste" means a solid waste, or combination of solid wastes, defined as hazardous by 42 U.S.C. §6903 (5) and 40 C.F.R Part 261.3, as either may be amended from time to time.

(j) "Industrial solid waste" means solid waste generated by industrial processes and manufacturing.

(k) "Infectious Waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes and any additional medical items defined as medical wastes by 33 U.S.C. §1402, as it may be amended from time to time, with the exception of medical waste generated at home, including needles used for injections, if, and only if, that waste is disposed of as directed by a medical professional.

(l) "Nuisance" means a condition that occurs as a result of the handling, treatment, or disposal of solid

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waste and sludge, which condition is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property.

(m) “Open Burning” means the burning of solid waste under such conditions that the products of combustion are emitted directly into the open atmosphere.

(n) “Open Dump” means any facility or site at which solid waste is disposed of that is not a site approved by the Tribes.

(o) “Person” means an individual, trust, firm, association, Federal, Tribal or State government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(p) “Recovery” means the recovery of materials or energy from solid waste.

(q) “Reservation” means The Colorado River Indian Reservation as established and geographically defined under the laws of the United States, encompassing all territory within its exterior boundaries as now or hereafter prescribed or ascertained, including fee patented and allotted lands used or claimed by any person, without regard to such person’s membership in the Colorado River Indian Tribes.

(r) “Residential” means a place of abode, residence, whether temporary or permanent, and includes homes, mobile homes, campers, recreational vehicles and similar places where a person may reside for any length of time.

(s) “Solid Waste” means all solid wastes including any household and residential garbage, trash, rubbish, refuse, and other discarded material and also includes, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, and agricultural operations (excluding agricultural waste), and from community activities, such as ashes, dead animals, abandoned vehicles, street and parking lot cleanings, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

(t) “Sludge” means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, septic tank, motor home, recreational vehicle, travel, or camping trailer, or similar source, or air pollution control facility or any other such waste having similar characteristics and effects.

(u) “Storage” means confining, containing or stockpiling of solid waste prior to collection and transport to an approved site.

(v) “Transfer Site” means any of the sites operated by the Tribes specifically for the temporary collection of solid waste prior to transfer to a permanent sanitary landfill.

(w) “Transporter” means any person who transports or causes to be transported any solid waste to any disposal site, including, but not limited to, a transfer station, a disposal or treatment facility.

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- (x) "Tribes" means the Colorado River Indian Tribes.
- (y) "Tribal Council" means the Colorado River Indian Tribes Tribal Council, as empowered and established by Article IV, Section 1 or the Constitution of the Colorado River Indian Tribes.
- (z) "Tribal Court" means the Colorado River Indian Tribes' Tribal Court, as empowered and established by Article XII of the Constitution of the Colorado River Indian Tribes.

[As amended, August 9, 2002, by Ord. 02-141.]

Section 11-8104. Responsibility for Storage, Transport And Disposal of Solid Waste.

- (a) Except as provided in Article I, Public Utilities Code, any person generating solid waste shall be responsible for the proper storage, transport and disposal of that solid waste, as set forth in this Article. Responsibility includes, but is not limited to, liability for any costs incurred in the clean up of solid waste that is improperly transported or disposed of, as set forth in Chapter 9 of this Article.
- (b) Except as provided in Article I, Public Utilities Code, any person who arranges for the recovery, transport, or disposal of solid waste is responsible for the proper transport and disposal of that solid waste, as set forth in this Article. Responsibility includes, but is not limited to, liability for any costs incurred in the clean up of solid waste that is improperly transported or disposed of, as set forth in Chapter 9 of this Article.
- (c) Except as provided in Article I, Public Utilities Code, any person disposing of solid waste shall be responsible for the proper disposal of that solid waste, as set forth in this Article. Responsibility includes, but is not limited to, liability for any costs incurred in the clean up of solid waste that is improperly disposed of, as set forth in Chapter 9 of this Article.

[As amended, August 9, 2002, by Ord. 02-141.]

CHAPTER 2. REQUIREMENTS APPLICABLE TO THE STORAGE OF SOLID WASTE

Section 11-8201. Storage of Solid Waste.

- (a) Any person generating solid waste shall store the solid waste in durable containers with close fitting lids. Containers shall be maintained in such a manner so as to prevent the creation of a nuisance or a menace to the public health.
- (b) It shall be a violation of this Article for the owner, agent or occupant of land to maintain an open dump on the premises.
- (c) Each day that solid waste is stored in violation of this Section 11-8201 shall constitute a separate civil violation of this Article.

CHAPTER 3. REQUIREMENTS APPLICABLE TO THE TRANSPORTATION OF SOLID WASTE

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Section 11-8301. Transportation of Solid Waste.

- (a) Any person transporting solid waste shall cover, tie or otherwise secure such solid waste so that no waste will be blown or dropped from the transport vehicle.
- (b) Each instance, in which solid waste is transported in violation of this Section 11-8301, shall constitute a separate civil violation of this Article. Distinct segments of a single trip shall be deemed a separate instance of transporting.

CHAPTER 4. REQUIREMENTS APPLICABLE TO THE DISPOSAL OF SOLID WASTE

Section 11-8401. Disposal of Solid Waste.

- (a) It is a violation of this Article for a person to dump, deposit or dispose of solid waste any place within the exterior boundaries of the Reservation other than at an approved site.
- (b) It is a violation of this Article for a person to conduct open burning of any pesticide containers or any other packaging related to pesticides at any time.
- (c) It is a violation of this Article for any person to destroy, remove or tamper with any signs posted by the Tribes at an approved site, an open dump or a trash bin.
- (d) It is a violation of this Article for any person to improperly dump, deposit or dispose of solid waste in a trash bin that is not intended for the use of that person, if the bin is so posted.
- (e) Each instance, in which solid waste is disposed of in violation of this Section 11-8401, shall constitute a separate violation of this Article.

CHAPTER 5. REGULATIONS APPLICABLE TO INFECTIOUS WASTE

Section 11-8501. Disposal of Infectious Waste.

- (a) No person shall deposit infectious waste at any transfer station operated by the Tribes.
- (b) All infectious waste shall be deposited in red bags (“red-bagged”), and deposited in a permitted sanitary landfill which is designated to receive infectious waste.
- (c) Each instance, in which infectious waste is disposed of in violation of this Section 11-8501, shall constitute a separate violation of this Article.

CHAPTER 6. SLUDGE

Section 11-8601. Disposal of Sludge.

- (a) All sludge shall be deposited in a sanitary landfill which is designated to receive sludge or in a septic lagoon.

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- (b) No person shall deposit sludge at any transfer station operated by the Tribes.
- (c) Each instance, in which sludge is disposed of in violation of this Section 11-8601, shall constitute a separate violation of this Article.

CHAPTER 7. ENFORCEMENT

Section 11-8701. Enforcement Officers.

- (a) The following persons are authorized to issue citations for violations of any provision of this Article:
 - (1) C.R.I.T. Fish and Game Wardens
 - (2) C.R.I.T. Police Officers
 - (3) C.R.I.T. Solid Waste Management Coordinator and his or her delegates
 - (4) C.R.I.T. Environmental Protection Officer and his or her delegates

- (b) Enforcement officers shall issue citations based on either:

- (1) probable cause that a person has violated this Article; or
- (2) the presence of three or more items in the solid waste which identify the same person as presumably responsible for the storage, transport or disposal of the solid waste, as presumption of ownership is defined in Section 11-8702 of this Article; or
- (3) for abandoned vehicles, the registered owner of the vehicle as determined by the Vehicle Identification Number will be held presumably responsible for the abandoned vehicle.

Section 11-8702. Presumption of Ownership.

When solid waste is dumped or deposited in violation of this Article and three or more items in the solid waste identify the same person as the owner or recipient of the waste, there shall be a rebuttable presumption that person is responsible for the unlawful dumping of the solid waste. If three or more items in the solid waste identify other parties as the owner or recipient of the waste, then each party so identified shall be held jointly and severally liable for violating this Article.

Section 11-8703. Civil Actions.

An enforcement officer is authorized to commence a civil action for any appropriate relief for a violation of this Code, including, but not limited to, a permanent or temporary injunction.

Section 11-8704. Commencement of Action.

A civil case for violation of this Article is commenced by issuance of a civil citation.

Section 11-8705. Service.

- (a) A citation issued pursuant to this Article may be served by delivering a copy of the citation to the person charged with the violation or by any means authorized by the rules of civil procedure for serving a civil complaint.
- (b) The original civil citation shall be filed in Tribal Court within ten court days of the time the citation was issued. A police officer may issue a civil citation.

Section 11-8706. Proceedings.

- (a) A person served with a civil citation shall:
 - (1) Appear at the time and place designated by Tribal Court.
 - (2) Admit or deny the allegations of the citation.
- (b) Allegations not denied at the time of appearance are deemed admitted.
- (c) If the allegations are admitted, the court shall enter judgement for the Tribes and shall impose a civil fine. The person may admit the allegations with an explanation, and then the court shall enter judgement for the Tribes and impose a civil fine. In determining the civil fine, the court may consider the explanation submitted.
- (d) If the allegations are denied, the court shall set the matter for a hearing. The hearing is informal and without a jury. At the hearing, the Tribes are required to prove the violation charged by a preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the person elects to be represented by counsel the person shall notify the court at least ten days before the hearing date. Hearings may be recorded. If the court finds in favor of the person, the court shall enter an order dismissing the allegation. If the court finds in favor of the Tribes, the court shall enter judgement for the Tribes and impose a civil fine.
- (e) If a person served with a civil citation alleging a violation of this Article fails to appear at or before the time directed to appear or at the time set for a hearing by the court, the allegations in the citation are deemed admitted, and the court shall enter judgement for the Tribes and impose a civil fine.

CHAPTER 8. CIVIL PENALTIES

Section 11-8801. GENERAL.

- (a) In addition to and notwithstanding any costs assessed pursuant to Chapter 9 of this Article, any person who violates or fails to comply with any provision of this Article shall be subject to the following civil fines:
 - (1) For a first violation, a fine not less than one hundred dollars (\$100) but not to exceed one thousand dollars (\$1,000).

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(2) Subsequent Violations:

- (A) Except as provided for in Subsection (2)(b) of this Section, for subsequent violations committed within one year of a previous violation of any provision of this Article, a fine not less than five hundred dollars (\$500) but not to exceed one thousand five hundred dollars (\$1,500). Separate violations determined pursuant to the provisions of Section 11-8201(c) and 11-8301(b) of this Article shall not constitute subsequent violations as set forth in this Section 11-8801(a)(2).
- (B) If a subsequent violation involves construction and demolition waste or industrial solid waste and the subsequent violation is committed within two years of a previous violation of any provision of this Article, regardless of the type of solid waste involved in the first incident, a fine not less than one thousand dollars (\$1,000) but not to exceed two thousand five hundred dollars (\$2,500). Separate violations determined pursuant to the provisions of Section 11-8201(c) and 11-8301(b) of this Article shall not constitute subsequent violations as set forth in this Section 1-8901(b)(2).

Section 11-8802. Punitive Damages.

Any person adjudged to have engaged in a pattern or practice of violating this Article may be liable for punitive damages in an amount not to exceed one thousand dollars (\$1,000). The Court may assess punitive damages pursuant to this Section 11-8802 for each violation of which the pattern or practice is found to consist.

Section 11-8803. Remittance of Fines.

Court judgements and monies collected pursuant to this Section shall be remitted to the Colorado River Indian Tribes and shall be used to defray the costs of the Tribes' Solid Waste Management Program.

CHAPTER 9. SUBSEQUENT DISPOSAL OF IMPROPERLY HANDLED WASTE

Section 11-8901. Court Ordered Clean up.

The Court may order any person adjudged to have stored, transported, disposed of or otherwise handled waste in violation of this Article to properly clean-up, or cause to be properly cleaned-up, any site contaminated or otherwise affected by such violation.

Section 11-8902. Reimbursement of Tribes.

If a person violates or fails to comply with this Article and the Tribes arrange for or execute the lawful disposal of the solid waste, that person shall be responsible to the Tribes for all reasonable costs and expenses associated with the transportation and proper disposal of the solid waste.

Section 11-8903. Reimbursement of Individual.

If a person violates or fails to comply with this Article and another individual, as either the owner or the lessee of the land upon which the waste is discovered, arranges for or executes the lawful disposal of the solid waste, the person who disposed of solid waste in violation of this Article shall be responsible to the individual who properly disposed of the solid waste for all reasonable costs and expenses associated with the transportation and proper disposal of the solid waste.

Section 11-8904. Attorney's Fees.

If the Tribes or a property owner files suit to collect their reasonable costs and expenses for disposal of solid waste as provided for in Chapter 9 of this Article, the court may award a reasonable amount as attorney's fees to the prevailing party.

Section 11-8905. Generator's Responsibility For Failure of Transporter or Disposer to Comply With This Article.

If a transporter or disposer of solid waste violates or fails to comply with this Article, the generator of the solid waste shall be held responsible for the recovery of disposal costs as provided for in Sections 11-8901, 11-8902 and 11-8903 of this Article.

Section 11-8906. Transporter's Responsibility For Failure of Disposer to Comply With This Article.

If a disposer of solid waste violates or fails to comply with this Article, the transporter of the solid waste may be held responsible for the recovery of disposal costs as provided in Sections 11-8901, 11-8902 and 11-8903 of this Article.

CHAPTER 10. FAILURE TO PAY FINES

Section 11-81001. Civil Fines.

- (a) A person shall pay all civil fines within thirty (30) days from entry of judgement.
- (b) If payment within thirty (30) days will place an undue economic burden on a person, the court may extend the time for payment or may provide for installment payments. Upon failure to make installment payments in a timely manner, the balance on the judgement shall become immediately due and payable.
- (c) Any person who fails to pay an assessment of a civil penalty in a timely manner, whether pursuant to Subsection (a) or (b) of this Section, shall be required to pay, in addition to such amount, interest in the amount of eighteen percent from the date of the final order or the date of the final judgement, attorney's fees and costs of collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of the penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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CHAPTER 11. SEIZURE AND IMPOUNDMENT OF VEHICLES AND EQUIPMENT

Section 11-81101. Seized and Impounded Vehicles and Equipment.

(a) Vehicles and equipment used to commit acts which violate any provision of this Article are subject to confiscation and impoundment pending appearance of the owner or operator in Tribal Court to answer a complaint or citation. Upon appearing in Tribal Court, the seized items shall be returned to the defendant.

(b) The owner or operator of a vehicle seized and impounded pursuant to this Article shall be held responsible for all costs associated with such seizure and impoundment.

CHAPTER 12. SEVERABILITY CLAUSE

Section 11-81201. Severability.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Article.
