TITLE 15 - ENVIRONMENT

CHAPTER 1 - SOLID WASTE MANAGEMENT

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THE TOHONO O'ODHAM SOLID WASTE MANAGEMENT CODE

Adopted February 12, 1997
Amended October 16, 1997

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SOLID WASTE MANAGEMENT CODE
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THE TOHONO O'ODHAM SOLID WASTE MANAGEMENT CODE

:HAPTER 1. SHORT TITLE, FINDINGS AND PURPOSE

ection 101. Short Title. This Code shall be known as the Tohono O'odham Solid Waste Management Code (the "Code").

ection 102. Legislative Findings. The Tohono O'odham Legislative Council ("Legislative Council") hereby finds that:

a) the Tohono O'odham Nation ("Nation") desires to manage and regulate the storage, collection, transportation, and disposal of solid waste and certain hazardous waste on lands of the Nation in order to protect the Nation's environment, its natural resources, the political integrity and economic security of the Nation, and the health, safety, and welfare of its members and all persons present on the lands of the Nation;

b) solid waste or hazardous waste disposed of in open dumps may be harmful to health, and may contaminate the land, the air, and drinking water from underground and surface supplies ;

c) the Nation is required to comply with the federal Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq., as amended by the Resource Conservation and Recovery Act of 1976, the regulations issued thereunder, including 40 C.F.R. Part 258 ("Part 258"), and the Indian Lands Open Dump Cleanup Act, 25 U.S.C. §§ 3901-3908; and

d) it is in the public interest for the Nation to establish and maintain a comprehensive solid waste management law and policy.

ection 103. Purpose. This Code is enacted, and shall be interpreted to accomplish the following purposes:

a) to manage and regulate the storage, collection, transportation, and disposal of solid waste and certain hazardous waste on lands of the Nation in order to protect the Nation's environment, its natural resources, the political integrity and economic security of the Nation, and the health, safety, and welfare of its members and all persons present on the lands of the Nation; and

b) to comply with applicable federal law regarding disposal of solid waste and hazardous waste.

ection 104. Applicability of this Code. This Code shall apply to all lands of the Nation, and to all persons who generate, dispose of, handle, store or transport solid waste or hazardous waste or who by con-

tract or agreement cause solid or hazardous waste to be generated, disposed of, handled, stored or transported on lands of the Nation, except for those persons who generate, dispose of, handle, store or transport hazardous waste under lawful permit from the United States Environmental Protection Agency ("USEPA") issued under the authority of Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921-6939e or the regulations issued thereunder.

CHAPTER 2. DEFINITIONS

Section 201. Definitions.

(a) "Authorized solid waste landfill" means a solid waste landfill which if located on lands of the Nation is established and operated in compliance with this Code, or if on lands outside the boundaries of the Nation is established and operated in compliance with 40 CFR Part 257 and Part 258.

(b) "Closure" means the termination of the receiving, handling, or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.

(c) "Construction" means the erection or building of new structures and the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures.

(d) "Construction debris" means any waste generated during construction, as defined in this Code, including without limitation inert material and asphalt, dry wall, pipes, wood, paper, wall coverings, floor coverings, glass, scrap metal, concrete, stucco, roofing materials, and plumbing, heating and electrical parts.

(e) "Court" means the Tohono O'odham Judicial Court.

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

(g) "District" means any of the 11 districts of the Nation.

(h) "Hazardous waste" shall have the meaning given in 40 CFR § 261.3.

(i) "Household hazardous waste" means materials which could be classified as hazardous waste under 40 CFR § 261.20 - § 261.35 but are exempt from treatment as hazardous waste under 40 CFR § 261.4(b)(1) because they are generated by households. This category includes non-empty household size containers of paint, paint products, household cleaners, automotive fluids, pesticides, pool chemicals, household batteries, and similar materials.

(j) "Lands of the Nation" means all lands within the territorial jurisdiction of the Nation, whether or not the Nation has an ownership interest in the land, including but not limited to tribal trust land, allotted land, patented land, homesteads, leased land, and rights of way. Included within the territorial jurisdiction of the Nation are the lands established by the following Executive Orders: December 12, 1882, modified by June 17, 1909 (Gila Bend); July 1, 1874 (San Xavier); February 1, 1917 (Sells); and the following Acts of Congress: the Act of February 21, 1931 (Sells); the Act of September 10, 1978 (Florence); and such other lands as may have been or may hereafter be added thereto by purchase, gift, Act of Congress or otherwise.

(k) "Nation" means the Tohono O'odham Nation, a federally recognized Indian tribe, organized under a constitution adopted by the Nation on January 18, 1986 and approved by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) on March 6, 1986 pursuant to section 16 of the Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. § 476).

(l) "Open burning" means the combustion of solid waste without: (1) control of combustion air to maintain adequate temperature for efficient combustion; (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and (3) control of the emission of the combustion products.

(m) "Open dump" means any facility or site where solid waste is disposed of which is not an authorized solid waste landfill and which does not meet the criteria issued under 40 CFR Part 257 or Part 258 and which is not a facility authorized for disposal of hazardous waste.

(n) "Person" means any individual, trust, firm association, partnership, Indian nation, corporation or business chartered by an Indian nation, State or county or municipal government or any of their departments, commissions or political subdivisions, the United States or any department, agency, or instrumentality of the United States, interstate body, industry, public or private corporation, any legal entity or private enterprise, and includes members and non-members of the Nation.

(o) "Plan" means the Solid Waste Management Plan adopted by the Legislative Council pursuant to section 501 of this Code.

(p) "Premises" means land and any structure, house, business, office or appurtenances on the land.

(q) "Solid waste" means any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including domestic or wild dead animals, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial mining, and agricultural operations, and from community activities, but does not include wood ashes, 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 by the United States 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), or mine tailings and waste rock.

(r) "Solid waste landfill" means a facility for the disposal of solid waste which complies with this Code.

(s) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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:

(a) to develop solid waste laws for presentation to the Legislative Council for approval;

(b) to issue regulations in compliance with this Code and which are necessary or beneficial to the purposes of this Code;

(c) to implement, administer and enforce this Code and any other solid waste laws and regulations of the Nation;

(d) to prepare an 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;

(e) to implement the Solid Waste Management Plan ("Plan") adopted by the Legislative Council pursuant to section 501 of this Code;

(f) to implement the plan for closure of open dumps;

(g) 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;

(h) 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;

(i) 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;

(j) to enter on or into any site or premises subject to a permit under this Code or in which records relevant to the operation of regulated facilities or activities are kept;

(k) to investigate any reports of violations of this Code, to issue notice of violation, and to cite violators of this Code into Tohono O'odham Judicial Court ("Court");

(l) 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;

(m) to issue orders to enforce permit requirements;

(n) 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

(o) 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. <u>Regulations Issued by the Solid Waste Regulatory Office.</u>

(a) 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:

(1) 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;

(2) the standards and procedures to be followed for closure of open dumps;

(3) the standards and procedures for use of the solid waste bins;

(4) the standards and procedures to be followed for any recycling or household hazardous waste collection programs;

(5) the standards and procedures for the disposal of construction debris.

(b) Except in emergency situations addressed in 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 stating 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.

(c) 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 affecting 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 final regulation as the SWRO deems appropriate.

Section 304. Solid Waste Landfill Regulations (Part 258).

a) Adoption and Incorporation of Part 258. The criteria contained in 40 C.F.R. Part 258, as amended now or in the future, are hereby adopted and incorporated by reference into this Code unless the Legislative Council specifically acts to delete or supplement such criteria. The term "Director of an approved State" or "State Director" as used in Part 258 shall be interpreted to mean the supervisor of the Nation's SWRO.

b) Law Applying to Landfills on Lands of the Nation. Any solid waste landfill located on lands of the Nation shall comply with this Code.

CHAPTER 4. SOLID WASTE MANAGEMENT PROGRAM

Section 401. Establishment of the Solid Waste Management Program.

There is hereby established a Solid Waste Management Program ("Program") which will be administratively organized in accordance with the Chairman's Administrative Plan or other organizational struc-

ture approved by the Legislative Council.

Section 402. **Duties of the Solid Waste Management Program.**

(a) The Program shall be responsible for implementing the solid waste collection and transportation system for the Nation, as provided for in the Plan.

(b) The Program shall be subject to regulation by the SWRO, and shall be required to obtain a permit from the SWRO.

(c) The Program shall be responsible to ensure that the solid waste collection and transportation system complies with this Code, and if the Nation's solid waste is transported and disposed of outside the lands of the Nation, that the system complies with all applicable federal, state, county and municipal laws regulating trucking and solid waste disposal.

(d) The Program shall prepare and implement an annual operating budget, including the fee schedule for the solid waste collection system.

(e) The Program shall develop, subject to the approval of the Legislative Council, any necessary modification of the Plan and shall hold public hearings on any significant modification in order to solicit community input to development of the Plan.

Section 403. **Authorization to Establish Recycling and Household Hazardous Waste Projects.** The Program is authorized to establish projects for the recycling of solid wastes such as aluminum, paper, glass, metal, and plastic, and for the collection of household hazardous waste. Such projects shall be dedicated to reducing the quantity of solid waste being disposed of in landfills and to keeping hazardous waste out of solid waste landfills. The Chairman of the Nation is authorized to negotiate inter-governmental agreements with county, municipal or other governments to implement such projects, subject to approval by the Legislative Council.

CHAPTER 5. SOLID WASTE MANAGEMENT PLAN

Section 501. **Adoption of a Solid Waste Management Plan.** The Legislative Council shall adopt a Solid Waste Management Plan. The Plan shall provide for collection of solid waste from homes, businesses and other establishments, transportation of solid waste, disposal of solid waste on or off the Nation's lands, and the inventory and closure plan for all open dumps on lands of the Nation. The closure plan for open dumps may be included as an appendix to the Plan at such time as the closure plan is completed. The Plan shall comply with federal law, the Nation's law, and any other applicable law. The Plan may at any time be modified or amended, with the approval of the Legislative Council, to

reflect the changing needs of the Nation or changes in applicable law.

Section 502. **Applicability of the Plan.** The Plan shall apply to all Districts of the Nation. The Plan may provide for individual Districts to create their own solid waste collection, transportation, and disposal systems in accordance with their own needs. District solid waste collection, transportation and disposal systems which are in place on the date of enactment of this Code, such as those in San Xavier District and San Lucy District, shall be made a part of the Plan. Any District solid waste collection, transportation or disposal system must comply with this Code and, if solid waste is transported or disposed of outside of the lands of the Nation, with any applicable federal, state, county or municipal solid waste law.

CHAPTER 6. PROHIBITED ACTIVITY

Section 601. Prohibited Activity. On or after ~~October 9, 1997~~, [April 9, 1998], or on such subsequent date as the USEPA may require in future rulemaking, the following activities are prohibited and are unlawful anywhere on the lands of the Nation:

(a) Disposal of solid waste or hazardous waste in any open dump or in any place not authorized by this Code or by the Plan or by any regulations adopted by the SWRO, unless the disposal is performed for Tohono O'odham religious or cultural reasons;

(b) Allowing solid waste to accumulate upon premises so as to create a public health hazard;

(c) Open burning of any solid waste or hazardous waste, or burning of solid waste or hazardous waste within the solid waste bins, except as otherwise authorized in this Code;

(d) Generation, disposal, handling, storing, or transporting any hazardous waste, except for hazardous waste which is generated, disposed of, handled, stored, or transported under lawful permit from the USEPA or the SWRO issued under the authority of Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921-6939e or the regulations issued thereunder;

(e) Placing in the solid waste bins provided by the Nation, a District, or by an agent of the Nation or a District, or in any authorized solid waste landfill, any of the following items:

(1) Radioactive wastes;

(2) Hazardous waste as defined in this Code;

(3) Household hazardous wastes, meaning wastes such as non-empty household-size containers of paint, paint products, household cleaners, automotive fluids, pesticides, pool chemicals, household batter-

ies, and similar materials;

(4) Infectious biomedical wastes which includes human tissue or human anatomical remains;

(5) Animals or bedding exposed to infectious diseases such as but not limited to tuberculosis, rabies, and anthrax;

(6) Sharps, needles and lancets which have not been contained for disposal in leak-proof, rigid, puncture-resistant containers such as car tons or metal cans which are taped closed or tightly lidded to preclude loss of contents under severe compaction conditions;

(7) Bulk quantities of infectious-type wastes including blood, blood products and body fluids;

(8) Asbestos containing materials;

(9) Sewage or sewage sludge wastes;

(10) Uncontained liquids of any kind in quantities greater than one gallon;

(11) Polychlorinated biphenyls (PCBs);

(12) Car batteries;

(13) Used petroleum based oil;

(14) 55 gallon drums, whether empty or filled;

(15) Explosives;

(16) Tires;

(17) Oil or gas exploration wastes;

(18) Asphalt, including any ingredients thereof;

(19) Dead animals the size of adult domestic cats or larger;

(20) Large appliances such as washers, dryers, refrigerators, evaporative coolers and air conditioners;

(21) Construction debris from commercial contractors or governmental agencies;

(22) Ashes from wood fires or other authorized burning;

(23) Any other solid waste as determined by the SWRO in its discretion and as published by the SWRO in regulations.

Section 602. <u>Exemption.</u> The following activities are exempt from the prohibitions of this Chapter:

(a) Burning of cuttings of trees and shrubs, and controlled or authorized burning of grass, leaves, or agricultural waste under rules to be adopted by the SWRO in consultation with the Districts ;

(b) Use of fires at traditional O'odham ceremonies and feasts, for outdoor cooking, or in wood stoves;

(c) Disposal of dead animals by burial, placement in a remote location, or other method approved by the SWRO pursuant to regulations adopted by the SWRO. Any other disposal of dead animals, including allowing them to remain on a public road right-of-way within 10 feet of the roadway or

within 1 mile of any house, is a violation of this Code. Disposal of dead animals in accordance with this Code and regulations hereunder is the responsibility of the owner of the animal. Each District or community may decide how to dispose of dead wild animals or dead animals which have not been disposed of by an owner in accordance with this Code.

(d) Use of outhouses;

(e) Disposal of wood ashes on the ground or buried in the ground;

(f) Allowing abandoned vehicles to remain on one's premises.

Section 603. <u>Responsibility for Storage, Disposal and Transportation of Solid Waste and Hazardous Waste.</u>

(a) 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 waste until it is lawfully deposited in an approved site or collected by the Nation, an authorized District, or an agent authorized by the Nation or a District to collect solid waste or hazardous waste.

(b) 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.

(c) 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. It shall be the occupant's responsibility to maintain the premises free of litter, refuse or other solid waste or hazardous waste and to properly store solid waste or hazardous waste upon the premises.

(d) 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 item, there shall be a presumption that the person so identified is responsible for the unlawful disposal of the solid waste or hazardous waste.

(e) 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 provisions of this Code.

Section 604. <u>Use of Solid Waste Bins.</u>

(a) The occupant of any premises shall deposit the occupant's solid waste in the containers provided in accordance with the Nation's Plan and the instructions of the Program.

(b) Items which are too large to be placed in the bins shall be stored separately in places designated by the SWRO or by the Program for separate pick up by the Program or other authorized collection agent. Doors shall be removed from all appliances prior to depositing them at the storage

site.

Section 605. Household Hazardous Waste. Household hazardous waste shall not be deposited in the bins but shall be stored separately by the occupant of any premises and shall be transported by the occupant or an authorized agent to collection centers designated by the Nation, or if transported outside the lands of the Nation to a collection center or authorized solid waste landfill designated by a county or a municipality.

CHAPTER 7. ENFORCEMENT AND PENALTIES

Section 701. Enforcement.

(a) Inspectors. 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.

(b) Notice of Violation. The inspector shall issue a written notice of violation to the person responsible for the violation. The notice of violation shall include a description of 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 if the violation is not corrected.

(c) 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 of the Nation shall represent the Nation in Court, subject to the provisions governing representation by the Office of 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.

(d) 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. Administrative 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.

(a) 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:

(1) injunction, including an order to clean up or remediate unauthorized dumping;

(2) a civil penalty in an amount not to exceed Twenty Five Thousand Dollars ($25,000) for each day each violation occurs;

(3) reasonable attorneys' fees and costs; and

(4) compensatory damages for the damage to the land or natural resources of the Nation, and for the reasonable costs 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.

(b) 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 a violator to perform community service in place of payment of the financial penalty.

(c) 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.

Section 703. Environmental Trust Fund. There is hereby established an Environmental Trust Fund ("Trust Fund"). All penalties, fines, fees or civil damages assessed by the Court shall be paid into the Trust Fund. Subject to appropriation by the Legislative Council, the Trust Fund shall be expended by the SWRO for paying costs of environmental cleanup on the Nation's lands, and for other purposes related to solid waste management. The Trust Fund shall be administered by the supervisor of the SWRO.

CHAPTER 8. CLOSURE OF OPEN DUMPS

Section 801. Timetable for Closure.

(a) Closure to further dumping. All open dumps on lands of the Nation shall be closed to further dumping on or before ~~October 9, 1997~~, [April 9, 1998] as required by the USEPA in 40 CFR § 258.1(d)(3), amended by 60 Federal Register 52337 (October 6, 1995), or on such subsequent date as the USEPA may require in future rulemaking or as the Legislative Council may designate.

(b) Final cover. All open dumps referred to in section 801(a) above shall have a final cover of earth applied in accordance with 40 CFR

§ 258.60(a) on or before October 9, 1998, as required by the USEPA in 40 CFR § 258.1(d)(3), amended by 60 Federal Register 52337 (October 6, 1995), or on such subsequent date as the USEPA may require in future rulemaking.

Section 802. Closure Standards. The SWRO shall develop standards for the closure of open dumps on lands of the Nation. Such standards shall be in compliance with Part 258. The SWRO shall ensure that these standards are followed by any person who performs the closing of the open dumps. The standards shall be designed to protect the health, safety, and welfare of individuals and communities located near the open dumps, the land and groundwater aquifers in the vicinity of the open dumps, and the health, safety and welfare of the workers employed to close the open dumps.

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.

Section 902. Landfill Operation. No person shall construct or operate a solid waste landfill on lands of the Nation unless the landfill has been approved by the Legislative Council and the person has received a permit from the SWRO. The permit may authorize construction and operation of a landfill in compliance with this Code. The SWRO shall establish by regulation the procedures for (1) application for a permit, (2) public hearing, (3) public review of and comment on permit application documents, and (4) the fee to be paid for a permit. Final permit documents shall be available for public review at the office of the

SWRO. Every permit shall provide that the SWRO has authority to conduct any inspections, perform any tests (at the facility or on materials or samples gathered at the facility), require responses to requests for information, or take any other action reasonably calculated to assert the SWRO's authority to carry out its duties under this Code.

Section 903. Administrative Orders. In furtherance of the SWRO's duty to regulate the conduct of persons involved in collection and transportation of solid waste, and in construction or operation of solid waste landfills, the supervisor of the SWRO may issue the following orders:

(a) denial of a permit;

(b) suspension, revocation, or modification of the permit of a person to whom a notice of violation under section 701(b) of this Code has been issued, and who has failed to correct the violation specified in the notice of violation;

(c) imposition of civil penalties in accordance with regulations issued by the SWRO;

(d) orders to enforce permit requirements;

(e) 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. An emergency restraining order may be issued without prior notice to the person or entity to be restrained, and shall expire within the time specified in the order, not to exceed ten (10) days. To obtain restraint for longer than ten (10) days, the SWRO may apply to the Court for a temporary or permanent injunction according to the rules applicable in the Court. Denial, suspension, revocation or modification of a permit shall not entitle the permittee to a refund of the permit fee.

Section 904. Judicial Review.

(a) Any person aggrieved by an order of the SWRO may apply to the Court for review of the order.

(b) Any such application for Court review must be made within 15 days of receipt of the order. The person requesting judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

(c) The reviewing Court shall decide all relevant questions of law presented, interpret constitutional and statutory provisions, and determine the basis for the action of the SWRO. The reviewing Court shall uphold the action of the SWRO unless the Court determines that such action was:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to a constitutional right provided under the Constitution of

the Tohono O'odham Nation, or contrary to power, privilege, or immunity;
(3) in excess of statutory jurisdiction, authority, or limitations, or in violation of statutory right;
(4) without observance of procedure required by law; or
(5) unsupported by substantial evidence.

CHAPTER 10. SOVEREIGN IMMUNITY AND PRIVATE RIGHT OF ACTION

Section 1001. Limited Waiver of Sovereign Immunity. The sovereign immunity of the Nation extends to the Nation's officers, employees and agents , and is in no way waived except for the limited waiver of sovereign immunity contained herein. The sovereign immunity of the Nation is hereby waived to the limited extent that lawsuits may be brought against the Nation under section 1002 in Tohono O'odham Judicial Court for injunctive relief or for declaratory judgment only, but not for damages (compensatory, consequential or punitive), penalties, attorneys' fees, court costs, or any other remedy.

Section 1002. Private Right of Action. Any person may sue any other person in Tohono O'odham Judicial Court to enforce the provisions of this Code or the regulations issued hereunder, or to allege a failure of the supervisor of the SWRO to perform any act or duty under this Code which is not discretionary with the supervisor. In lawsuits against parties other than the Nation, the Court may, in its discretion, award damages, penalties, attorneys' fees or court costs.

Section 1003. Restriction. No person may file a lawsuit under this Code either (1) prior to sixty (60) days after notifying the SWRO and the alleged violator in writing of the violation complained of, or (2) if the SWRO in the name of the Nation has filed and is diligently prosecuting an enforcement action in Court against the same alleged violator for the same violation.

Section 1004. Statute of Limitation. Subject to the provisions of sections 904(b) and 1003, any lawsuit brought under section 1002 must be filed within one (1) year of the act or violation complained of. In the event that the SWRO, in the name of the Nation, has filed and is diligently prosecuting an enforcement action in Court against the same alleged violator for the same violation, the one (1) year time period shall be tolled and shall begin to run on the date of a final order or judgment by the Court in the action. The statute of limitations does not apply to

lawsuits filed by the Nation.

Section 1005. Intervention. The Nation, if not a party to the action, may intervene as a matter of right in any action brought under this Code.

CHAPTER 11. EXCLUSION OF LIABILITY AND INDEMNIFICATION

Section 1101. Exclusion of Liability and Indemnification. The Nation or any of its members, officers, agents or employees shall not be liable for any loss, damage or injury of any kind to a person, property, resources or the environment caused by any person, vendor or permittee who contracts with the Nation to collect, transport, handle, or dispose of solid waste, or to close open dumps. Any person, vendor or permittee who contracts with the Nation to collect, transport, handle or dispose of solid waste, or to close open dumps, shall indemnify the Nation, its members, officers, agents or employees and shall defend and hold them harmless from any claims and liabilities of any nature whatsoever arising from actions of the person, vendor or permittee taken under this Code, the Plan, the regulations or the permits issued under this Code.

CHAPTER 12. AMENDMENT, SEVERABILITY, AND REPEAL OF PRIOR AND INCONSISTENT LEGISLATION

Section 1201. Amendment. This Code may be amended by action of the Legislative Council.

Section 1202. Severability. If any provisions of this 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 application of the remaining provisions of this Code, shall not be affected thereby.

Section 1203. Repeal of Prior and Inconsistent Legislation. Enactment of this Code repeals any prior legislation of the Nation which is inconsistent with this Code, including without limitation Ordinance No. 03-84, and supersedes any prior enactments of the Districts of the Nation which are inconsistent with this Code.

CHAPTER 13. EFFECTIVE DATE

Section 1301. Effective Date. This Code shall be effective on the date that a Resolution enacting this Code is duly enacted by the Legislative Council and signed by the Chairman of the Nation.

NOTE:
The Tohono O'odham Solid Waste Code was amended on October 16, 1997 by Resolution No. 97-439; to extend the implementation deadline contained in Section 601 and Section 801(a) by six (6) months until April 9, 1998. The date of October 9, 1997 in Section 601 and Section 801(a) has been changed to April 9, 1998 in this copy of the Code. All other provisions of the Solid Waste Management Code remain unchanged and in effect

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Adopting the Tohono O'odham Solid Waste Management Code and Solid Waste Management Plan)

RESOLUTION NO. 97-041

WHEREAS, the Tohono O'odham Nation ("Nation"), in exercise of its sovereign authority, desires to manage and regulate the storage, collection, transportation and disposal of solid waste and certain hazardous waste on lands within the boundaries of the Nation in order to protect the Nation's environment, its natural resources, the political integrity and economic security of the Nation, and the health, safety and welfare of its members and all persons present on the lands of the Nation; and

WHEREAS, the Second Draft of the Solid Waste Management Code and the Recommended Solid Waste Management Plan attached hereto will promote the interests of the Nation and will assist in bringing the Nation into compliance with the federal Solid Waste Disposal Act, 42 U.S.C. 6901 et seq., as a amended by the Resource Conservation and Recovery Act of 1976, and with the regulations issued thereunder, including 40 C.F.R. Part 258, and with the Indian Lands Open Dump Cleanup Act, into a Second Draft of the Solid Waste Management Code; and 25 U.S.C. 3901-3908; and

WHEREAS, the Tohono O'odham Legislative Council ("Legislative Council") approved the establishment of a Solid Waste

Management Committee by Resolution No. 95-564, and this Solid Waste Management Committee has developed and approved the Recommended Solid Waste Management Plan and recommends that the Legislative Council approve the Plan; and

WHEREAS, the Recommended Solid Waste Management Plan proposes that the Nation implement a program to provide solid waste bins in each community and operate a trucking system to collect the solid waste from these bins and haul it to landfill located off of the Nation's lands; and

WHEREAS, the Solid Waste Office of the Planning and Operations Department, in consultation with the Solid Waste Management Committee, has solicited land sites for the Solid Waste Program Building from Gu Achi District, Schuk Toak District and Sells District, and Gu Achi District has approved of a land site on Highway 86 in Gu Achi District Resolution No. 0996-131 (attached to the Recommended Plan) but the other two districts have declined to approve a land site, and the Solid Waste Office of the Planning and Operations Department has selected the site in Gu Achi District; and

WHEREAS, the Solid Waste Management Committee has taken the First Draft of a Solid Waste Management Code to each of the Districts and has held hearings on this Code; and

WHEREAS, the comments from these hearings in each District and the comments from the Office of the Attorney General have been incorporated into a Second Draft of the Solid Waste Management Code; and

WHEREAS, the Solid Waste Management Committee and the Rules Committee of the Legislative Council have reviewed and approved the Second Draft of the Solid Waste Management Code and recommend that the Legislative Council approve the code and in addition the Natural Resources Committee has reviewed the Second Draft and has recommended deletion of

Section 305 relating to the Solid Waste Advisory Committee; and

WHEREAS, upon the recommendation of the Legislative Council at the October 1996 general session, the Solid Waste Management Committee reviewed the Second Draft of the Solid Waste Management Code with each of the eleven District Councils of the Nation, and incorporated some of the suggestions from these District Council meetings into the current revision of the Second Draft of the Solid Waste Management Code; and

WHEREAS, the Domestic Affairs Committee of the Legislative Council has reviewed the current revision of the Second Draft of the Solid Waste Management Code and recommends its approval.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts the Second Draft of the Solid Waste Management Code as amended in this Legislative Council session and in the form attached hereto, to be known as the Tohono O'odham Solid Waste Management Code, and approves the Recommended Solid Waste Management Plan in the form attached hereto, to be known as the Tohono O'odham Solid Waste Management Plan.

BE IT FINALLY RESOLVED that the Solid Waste Management Committee shall continue to function under the authority of Resolution No. 95-564 until such time as the Legislative Council shall disband the committee.

The foregoing Resolution was passed by the Tohono O'odham nation Legislative Council on the 5th, Day of FEBRUARY, 1997 at a meeting at which a quorum was present with a vote of 1,440.0 FOR; 276.0 AGAINST; -0- NOT VOTING; and 160.0 [07] ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1(c) (2) & 1 (i) (2) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary-Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

10th day of February, 1997

ATTEST:

Frances G. Antone, Legislative Secretary

10th day of February, 1997.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 10th day of February, 1997 at 3:01 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

[X] APPROVED on the 12 day of February, 1997

[ ] DISAPPROVED at 10:10 o'clock, A.M.

EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 12th day of February, 1997, at 10:46 o'clock, A.M.

Frances G. Antone, Legislative Secretary

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Amending the Solid Waste Management Code to Extend the Implementation Deadline by Six Months Until April 9, 1998)

RESOLUTION NO. 97-439

WHEREAS, in Resolution No. 97-041 the Tohono O'odham Nation ("Nation") adopted a Solid Waste Management Code and a Solid Waste Management Plan, effective on February 12, 1997, containing an implementation deadline of October 9, 1997 for the closing of all open dumps on the Nation's lands to further dumping, the prohibition of certain dumping and burning practices, and the implementation of an alternative solid waste collection and hauling system involving community trash bins and compactor trucks operated by the Nation to haul solid waste off of the Nation's lands to existing municipal landfills in Ajo, Casa Grande and Tucson; and

WHEREAS, the Nation's implementation deadline is based on an open dump closure deadline of October 9, 1997 set by the United States Environmental Protection Agency in 40 CFR § 258.1(d)(3), as amended, under the authority of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921-6939e, for open dumps that are small and in arid, rural lands to stop receiving new waste; and

WHEREAS, by letter dated August 5, 1997 the Nation requested an extension of the federal October 9, 1997 deadline from the Environmental Protection Agency but the Environmental Protection Agency has denied the Nation's request for extension; and

WHEREAS, the Nation appropriated operating funds for the Solid Waste Management Program on April 12, 1997, appropriated capital funds for equipment purchases and building construction on July 11, 1997, hired a Solid Waste Program Manager on July 11, 1997, and began operation of the Solid Waste Management Program in July 1997; and

WHEREAS, the Nation's Solid Waste Management Program has begun to implement the alternative waste hauling system and has ordered the trash compactor trucks and the community bins and other equipment, but despite the Program's best efforts the system will not be in place by the October 9, 1997 deadline; and

WHEREAS, the implementation of the alternative waste collection and hauling system is expected to begin in early February 1998; and

WHEREAS, the dumping and burning prohibitions and the open dump closure requirements in the Solid Waste Management Code cannot be enforced until the alternative waste collection and hauling system is in place; and

WHEREAS, an extension of time of six (6) months until April 9, 1998 is needed to provide for proper implementation of the alternative waste collection and hauling system; and

WHEREAS, the Solid Waste Management Committee of the Nation has recommended the six month extension, and the Natural

Resources Committee of the Legislative Council has reviewed the matter and recommends the same.

NOW, THEREFORE, BE IT RESOLVED that the Nation's Solid Waste Management Code is amended so that the implementation deadline of October 9, 1997 in Section 601 and in Section 801(a) is amended to read April 9, 1998, and that all other provisions of the Solid Waste Code not inconsistent with this amendment shall remain in full force and effect.

The foregoing Resolution was passed by the Tohono O'odham Council on the 9TH. day of OCTOBER, 1997 at a meeting at which a quorum was present with a vote of 1,617.0 FOR; 190.0 AGAINST; -0- NOT VOTING; and 120.0 [06] ABSENT, pursuant to the powers vested in the Council by Section 1(c)(2), (i)(2) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

14th day of October, 1997

ATTEST:

Julianna Saraficio, Acting Legislative Secretary

14 day of October, 1997.

RESOLUTION NO. 97-439
(Amending the Solid Waste Management Code to Extend the Implementation Deadline by Six Months Until April 9, 1998)

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 14th day of October, 1997 at 9:24 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

[✓] APPROVED **on the 16th day of October, 1997**

[ ] DISAPPROVED **at 9:55 o'clock, A.M.**

EXCEEDED 48 HOURS

EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 16th day of October, 1997, at 10:20 o'clock, A.M.

Julianna Saraficio, Acting Legislative Secretary

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL

(Approving a Plan of Operation for the Environmental Trust Fund and Amending Section 703 of the Solid Waste Management Code)

RESOLUTION NO. 2000-194

WHEREAS, there is a need to provide a Plan of Operation for the Environmental Trust Fund to allow the Tohono O'odham Nation ("Nation") to respond to environmental contamination incidents and natural disasters promptly in order to protect the health and safety of the O'odham and their environment, and to designate the Environmental Trust Fund as the place to deposit cost recovery payments made by individuals, businesses, corporations or other entities who damage human health, the land or the environment of the Nation; and

WHEREAS, a working group consisting of staff from the Environmental Office, the Planning Department, the Solid Waste Regulatory Office, the Solid Waste Management Program, the Department of Public Safety, the Treasurer's Office, the Accounting Department, the General Services Administration and the Attorney General's Office have worked together to create a concept and a plan of operations for the Environmental Trust Fund; and

WHEREAS, the Environmental Trust Fund was established by Section 703 of the Solid Waste Management Code on February 12, 1997, to receive funds from all solid waste penalties, fines, fees, or civil damages assessed by the Tohono O'odham Judicial Court, and was later designated to receive funds from court fines and penalties collected under the Emergency Planning and Community Right-To-Know Ordinance, Ordinance No. 98-02; and

WHEREAS, Section 703 of the Solid Waste Management Code needs to be amended to allow funds from additional sources to be placed in the Environmental Trust Fund, to allow the Environmental Trust Fund to be used for prompt response to a broad range of environmental contamination incidents and natural disasters, and to provide that permit application fees to the Solid Waste Regulatory Office are placed in general revenues rather than into the Environmental Trust Fund.

NOW, THEREFORE, BE IT RESOLVED that the Plan of Operation for the Environmental Trust Fund is hereby approved in the form attached hereto. All current and future funds in the Environmental Trust Fund shall be available for expenditure in accordance with the Plan of Operation without further appropriation.

BE IT FURTHER RESOLVED that Section 703 of the Solid Waste Management Code is amended by deleting the word "fees" from the second sentence, and by deleting all of Section 703 after the first two sentences, as follows:

Section 703. Environmental Trust Fund. There is hereby established an Environmental Trust Fund ("Trust Fund"). All penalties, fines, ~~fees~~ or civil damages assessed by the Court shall be paid into the Trust Fund. ~~Subject to appropriation by the Legislative Council, the Trust Fund shall be expended by the SWRO for paying costs of environmental cleanup on the Nation's lands, and for other purposes related to solid waste management. The Trust Fund shall be administered by the supervisor of the SWRO.~~

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 04TH. day of MAY, 2000 at a meeting at which a quorum was present with a vote of 1,792.8 FOR: 372.7 AGAINST: -0- NOT VOTING; and [03] ABSENT, pursuant to the powers vested in the Council by Section 1(c)(2) and 1(i) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

____ day of _____, 20____

ATTEST:

Julianna Saraficio, Acting Legislative Secretary

04TH day of May, 20 00.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the ____ day of _____, 20____ at 1:13 o'clock. ____P____.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Dennis Ramon, Legislative Chairman

[X] APPROVED on the 10th day of May, 2000

[ ] DISAPPROVED at 1:29 o'clock, P.M.

EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 10TH day of May, 2000, at 3:10 o'clock, P.M.

Julianna Saraficio, Acting Legislative Secretary

PLAN OF OPERATION
ENVIRONMENTAL TRUST FUND
TOHONO O'ODHAM NATION

Adopted by Legislative Council Resolution No. 2000-194

I. PURPOSE

A. The Environmental Trust Fund exists to allow the Tohono O'odham Nation (the "Nation") to respond to environmental contamination incidents and natural disasters promptly in order to protect the health and safety of the O'odham and their environment.

II. SOURCE OF FUNDS

The sources of funds in the Environmental Trust Fund shall include:

A. All penalties, fines, or civil damages assessed by the Tohono O'odham Judicial Court for violations of the Solid Waste Management Code, the Emergency Planning and Community Right-to-Know Ordinance (Ordinance No. 98-02), or other environmental laws of the Nation enacted now or in the future.

B. Any recovery of the Nation's costs incurred for emergency response, removal or remedial action recovered from individuals, businesses, corporations or other entities who damage human health, the land or the environment of the Nation.

C. Any further appropriations by the Tohono O'odham Legislative Council, or funds directed by the Legislative Council to be placed in the Environmental Trust Fund.

III. EXPENDITURE OF FUNDS

A. The funds in the Environmental Trust Fund may be spent on cleanup response to environmental contamination incidents and natural disasters. Examples of permissible costs include cleanup of solid waste, hazardous or toxic materials, evaluation of contamination, sampling, laboratory costs, remediation, and emergency food, blankets, supplies or emergency shelter needed during emergencies. This listing of permissible costs does not limit the kinds of costs on which funds may be expended.

B. Funds shall not be spent to reimburse departments of the Tohono O'odham Nation for routine budgeted activity.

C. Decisions regarding expenditures from the Environmental Trust Fund shall be made by the Director of the Department of Public Safety or his designated representative, under procedures worked out between the Director of the Department of Public Safety and the Controller.

D. The Director of the Department of Public Safety shall report to the Tohono O'odham Legislative Council Domestic Affairs Committee within ninety (90) days after expenditure of funds on an incident and thereafter to the full Legislative Council.