

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY**
1005 East Osborn Road
Scottsdale, Arizona 85256

ORDINANCE NUMBER: SRO- __-__

TO AMEND CHAPTER 18, BY ADDING ARTICLE V, RELATED TO OPEN BURNING, TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES IN ITS ENTIRETY.

BE IT ENACTED THAT:

The Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended by adding a new Article V in its entirety, to be numbered as Chapter 18, Article V, Sec. 18-81 through Sec. 18-94, as follows:

ARTICLE V.

Sec. 18-81 TITLE, AUTHORITY, PURPOSE, etc.

- (a) *Title.* This Article shall be known as the Salt River Pima-Maricopa Indian Community Open Burning Ordinance.
- (b) This Article is enacted pursuant to Article VII, Section 1(c)(1), (c)(7), and (k) of the Salt River Pima-Maricopa Indian Community Constitution.
- (c) *Purpose/Policy.* The purpose of this Article is to regulate and mitigate open burning sources within the exterior boundaries of the Salt River Pima Maricopa Indian Community by minimizing the amount of particulate matter (PM) emitted into the ambient air as a result of the impact of human related activities through regulatory measures aimed to prevent, reduce, or mitigate particulate matter emissions.
- (d) *Scope.* This Article shall regulate the release of all Open Burning within the Salt River Pima-Maricopa Indian Community.
- (e) *Regulatory Authority.* The authority of the Salt River Pima Maricopa Indian Community, Community Development Department Director, or as may be delegated shall include the promulgation, issuance, and enforcement of regulations, policies, procedures, or rules, as may be necessary or appropriate for the implementation of this Article.

Sec. 18-82 APPLICABILITY

This Ordinance limits particulate matter (PM) emissions into the ambient air from open burning. This Ordinance minimizes the amount of fine particulate and air toxics emitted into the ambient air as a result of the impact of open burning activities.

DEFINITIONS

In this Article, unless the context otherwise requires, the following terms shall have the meanings herein defined:

- (a) *Agricultural waste* means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. It includes any matter generated by crop, horticultural, or livestock production practices, and includes such items as bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings; garbage; dead animals; motor vehicles and parts thereof; nor pesticides and containers thereof.
- (b) *Community* means the Salt River Pima-Maricopa Indian Community (SRPMIC).
- (c) *Community Manager* means the SRPMIC Community Manager or his/her authorized representative.
- (d) *Environmental Protection and Natural Resources (EPNR)* refers to environmental protection organization within the Salt River Pima Maricopa Indian Community. The person(s) authorized to act on behalf of the EPNR is the Community's Development Department Director or his/her authorized representative.
- (e) *Landscape waste* means any plant matter on land already developed for residential, commercial, or industrial purposes, including but not limited to, trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues; and does not include garbage.
- (f) *Land clearing waste* means any plant matter which is removed from land for the purpose of rendering the land useful for residential, commercial, or industrial development.
- (g) *Open burning* means the burning of any waste materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. An open burning permit is required for the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Open burning includes burning in burn barrels.
- (h) *Pathogenic Waste* means any waste materials that are capable of producing a disease by an organism likely to be pathogenic to healthy humans.
- (i) *Residential waste* means any matter, including Landscape Waste, generated on a family residence as a result of residential activities, but not including garbage.
- (j) *Smudge pot* (also known as a choofa or orchard heater) means an oil-burning device used to prevent frost on fruit trees.
- (k) *Solid waste* means any garbage, trash, rubbish, refuse and other solid, liquid, semisolid or contained gaseous materials but not including domestic sewage or hazardous waste.

Sec. 18-84 RELATIONS TO OTHER PROHIBITIONS

- (a) Notwithstanding any provisions in this Article V, no open burning shall be conducted in an area where a governmental entity having jurisdiction regarding air quality or the EPNR issues an air quality advisory or a burn ban.
- (b) No provisions of this Article V permitting open burning and no permission to open burn granted by the EPNR, shall exempt any person from compliance with any other section of this Article V.

Sec. 18-85 OPEN BURNING PROHIBITION, AND CONDITIONS

- (a) No person or property owner shall cause or allow open burning of the following sources within the exterior boundaries of the Salt River Pima Maricopa Indian Community:
 - (1) Solid waste;
 - (2) Dead animals or parts of dead animals;
 - (3) Junked motor vehicles or any materials resulting from a salvage operation;
 - (4) Tires or rubber materials or products;
 - (5) Plastics, plastic products, or Styrofoam
 - (6) Asphalt or composition roofing, or any other asphaltic material or product;
 - (7) Tar, tarpaper, petroleum products, or paints;
 - (8) Lumber or timbers treated with preservatives;
 - (9) Construction debris or demolition waste
 - (10) Pesticides, herbicides, fertilizers, or other chemicals;
 - (11) Insulated wire;
 - (12) Batteries;
 - (13) United States Flag;
 - (14) Light bulbs;
 - (15) Materials containing mercury (i.e., thermometers)
 - (16) Asbestos or asbestos-containing materials;

- (17) Pathogenic waste;
 - (18) Hazardous waste; or
 - (19) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.
- (b) Open burning shall be allowed for the following purposes without notification to or approval from the EPNR:
- (1) Cooking for human consumption; Fires allowed by this Sec. 18-85(b)(1) shall not be used for solid waste or residential waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation of air quality emissions such as dry fuels and no prohibited materials;
 - (2) Branding, heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers, and for smudge pots and similar occupational needs provided no prohibited materials are being burned;
 - (3) Cultural related activities;
 - (4) Fires set for recreational purposes, provided no prohibited materials are burned;
 - (5) Orchard heaters for the purpose of frost protection in farming or nursery operations; and
 - (6) Emergency control fires.
- (c) Open burning may be allowed for the following purposes upon receipt of a permit from the EPNR Department:
- (1) The disposal of ignitable or explosive materials is approved by the EPNR Department and it determines there is no practical alternate method of disposal;
 - (2) Instruction in methods of fire fighting or for research in the control of fires; and
 - (3) Recognized agricultural, range, or ecosystem management practices.

Sec. 18-86

PERMITS AND NOTIFICATION TO THE ENVIRONMENTAL PROTECTION AND NATURAL RESOURCES DEPARTMENT

- (a) The following permit process shall apply:
- (1) An open burning application must be submitted in writing at least one (1) working day, and no earlier than five (5) working days, prior to the

requested date that the burn would be conducted. The application shall be in such form and contain such information as required by the EPNR.

- (2) Such applications shall contain, at a minimum, information regarding:
 - a. Street address of the property upon which the proposed open burning activity will occur, or if there is no street address of the property, the legal description of the property;
 - b. Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning;
 - c. A plot plan showing the location of the proposed open burning in relation to property lines and indicating the distances and directions of the nearest residential and commercial properties;
 - d. The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over which open burning will be conducted;
 - e. A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water; and
 - f. The requested date when the proposed open burning would be conducted and the duration of the burn if it is more than one day.

- (3) A permit to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the EPNR:
 - a. The fire will be set only when atmospheric conditions will readily dissipate contaminants;
 - b. The fire does not create a visibility hazard on roadways;
 - c. The fire is located at a point on the premises not less than fifty feet from any inhabited building not located on said premises; and
 - d. The wastes are stacked and dried to provide the best practicable condition for efficient burning;
 - e. No prohibited materials are burned;
 - f. The waste to be burned will have no serious detrimental effect upon adjacent properties or the occupants thereof;
 - g. Any open burning shall be constantly attended until the fire is completely extinguished without smolders. Fire extinguishing equipment shall be available for immediate use. Open burning shall be extinguished prior to dark; and

- (4) The EPNR Department may impose such other conditions as may be necessary to accomplish the purpose of this Article V.
- (b) Violations of any of the conditions set forth by the EPNR Department in an approved a permit to open burn shall be grounds for revocation of such permit and refusal to grant future permits, as well as for the imposition of other sanctions provided by law.
- (c) A permit to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while a permit is sought, the fire may be set with oral permission of the EPNR.

Sec. 18-87 COMPLIANCE AND ENFORCEMENT - ADMINISTRATIVE

- (a) When EPNR determines that a violation of any of the applicable provisions of this Article has been committed, an administrative compliance process shall be initiated by the issuance of a Notice of Violation (NOV) sent certified mail to the owner or operator within thirty days of the violation. Depending on the nature and seriousness of the violation, the EPNR Manager, at his/her discretion, shall determine whether or not the violation constitutes a fine. During the administrative compliance process, the EPNR Manager shall have the authority to determine the fine assessment on applicable violations. EPNR will consult with the Office of General Counsel (OGC) and/or Office of Prosecutor in carrying out this task.
 - (1) Administrative fines and penalties for violation of this Article shall not exceed five hundred dollars (\$500.00) for each such violation and for each day of its continuance which may constitute a separate violation.
- (b) EPNR's NOV will at minimum state the section(s) of the Article the owner or operator violated, corrective action to remedy the violation, and specify a time period for corrective action.
- (c) *Appeal Process.* The owner or operator receiving the NOV may appeal the determination of EPNR in writing to the Community Manager within five (5) business days from the date the NOV is received. A meeting on the appeal before the Community Manager shall take place within thirty (30) days from the date the appeal is received by the Community Manager. The decision of the Community Manager shall be final.
- (d) If the owner or operator fails to pay the administrative fine or fails to comply with this Article V, EPNR shall initiate judicial proceedings by referring the violation to the Community's Office of General Counsel who may file civil proceedings or to the Office of Prosecutor for criminal proceedings against the violator in the Community's Tribal Court in accordance with the applicable civil or criminal laws of the Community.

Sec. 18-88 JUDICIAL PROCEEDINGS; COMMUNITY COURT

(a) The Community Court shall have jurisdiction to hear all actions brought by the Office of General Counsel or the Office of Prosecutor pursuant to Section 18-87(d) above, and may impose:

(1) Civil fines and penalties for violation of this Article V shall not exceed one thousand dollars (\$1,000.00) for each such violation and for each day of its continuance which may constitute a separate offense.

(2) Other relief as may be available by law, which may include injunctive relief, the posting of bonds or sureties to ensure compliance.

Sec. 18-89 REMEDIES NOT EXCLUSIVE

The remedies listed in this Article V are not exclusive of any other remedies available under any applicable federal, tribal, or local laws and is within the discretion of the Community to seek cumulative remedies.

Sec. 18-90 SEVERABILITY

If any provision of this Article V is deemed unenforceable, the remainder of this Article V shall continue in full force and affect

Sec. 18-91 EFFECTIVE DATE

This Article V shall be in full force and effect from and after its passage and approval by the Community Council.

Sec. 18-91 to 18-94 RESERVED.

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY**
10005 East Osborn Road
Scottsdale, Arizona 85256

ORDINANCE NUMBER: SRO-XXX-XX

TO AMEND CHAPTER 18, BY ADOPTING A NEW ARTICLE VI TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES FOR THE REGULATION OF FUGITIVE DUST SOURCES TO PROTECT THE HEALTH AND WELFARE OF THE COMMUNITY AND ITS MEMBERS BY IMPLEMENTING MEASURES TO ENHANCE CLEAN AIR IN THE COMMUNITY.

BE IT ENACTED THAT:

The Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended by adding a new Article VI in its entirety, to be numbered as Chapter 18, Article VI, Sec. 18-95 through Sec. 18-115, as follows:

ARTICLE VI

Sec. 18-95 TITLE, AUTHORITY, PURPOSE, etc.

- (a) *Title.* This Article shall be known as the Salt River Pima-Maricopa Indian Community Fugitive Dust Ordinance.
- (b) *Authority.* This Article is enacted pursuant to Article VII, Section 1(c)(1), (c)(7), and (k) of the Salt River Pima-Maricopa Indian Community Constitution.
- (c) *Purpose/Policy.* The purpose of this Article is to regulate and mitigate Fugitive Dust sources within the exterior boundaries of the Salt River Pima Maricopa Indian Community by minimizing the amount of particulate matter (PM) emitted into the ambient air as a result of the impact of human related activities through regulatory measures aimed to prevent, reduce, or mitigate particulate matter emissions.
- (d) *Scope.* This Article shall regulate the release of all Fugitive Dust within the Salt River Pima-Maricopa Indian Community.

Sec. 18-96 APPLICABILITY

- (a) *General Applicability.* This Article limits the amount of particulate matter (PM) emissions into the ambient air from any property, operation or activity that may serve as a fugitive dust source.
- (b) *Exemptions.* This Article does not apply to the owner or occupant of a

family residence or a residential building with four or less units, emergency activities conducted by any utility or government agency in order to prevent public injury or restore critical utilities, cultural related practices, and normal farming practices. However, one or more of these activities may be regulated under a separate Ordinance.

Sec. 18-97 DEFINITIONS

In this Article, unless the context otherwise requires, the following terms shall have the meanings herein ascribed to them:

- (a) *All Terrain Vehicle or "ATV"* means a motorized flotation tired vehicle of not less than three (3) low pressure tires, but not more than six (6) tires, that is limited in engine displacement of less than 800 cubic centimeters and total dry weight less than 600 pounds.
- (b) *Community* means the Salt River Pima-Maricopa Indian Community (SRPMIC).
- (c) *Community Manager* means the SRPMIC Community Manager or his/her authorized representative.
- (d) *Dust Control Plan (DCP)* means a written plan describing all dust control measures to be implemented and maintained in order to prevent or minimize the generation, emission, entrainment, suspension, and/or airborne transport of fugitive dust.
- (e) *Dust Generating Operation* means any activity capable of generating fugitive dust including, but not limited to, land clearing, earthmoving, excavating, construction, demolition, material handling, storage and/or transporting operations, vehicle use and movement, the operation of any outdoor equipment, or unpaved parking lots. For the purpose of this Article, landscape maintenance and/or playing on a ballfield shall not be considered a dust generating operation. However, earthmoving operations are.
- (f) *Dust Suppressants* are those materials applied to a soil surface to prevent soil particles from becoming airborne. Examples include fiber based, calcium chloride, magnesium chloride, lignosulfonate, petroleum resin, acrylic polymers, nonpetroleum based organics and ligninsulfonate
- (g) *Earthmoving Operation* means the use of any equipment for an activity which may generate fugitive dust including, but not limited to, cutting and filling, grading, leveling, excavating, trenching, loading or unloading of bulk materials, demolishing, blasting, drilling, adding to or removing bulk materials from open storage piles, backfilling, soil mulching, or landfill operations.
- (h) *Environmental Protection and Natural Resources* means the Salt River Pima Maricopa Indian Community Environmental Protection and

Natural Resources Office (EPNR). The person(s) authorized to act on behalf of the EPNR is the Community's Development Department Director or his/her authorized representative.

- (i) *Emergency* means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a limitation in this rule, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include any noncompliance due to improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (j) *Freeboard* means the vertical distance between the top edge of a cargo container area and the highest point at which the bulk material contacts the sides, front, and back of a cargo container area.
- (k) *Fugitive Dust* means particulate matter emissions made airborne by forces of wind, mechanical disturbances of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust. It includes particulate matter emissions which do not pass through a stack, chimney, vent, or other functionally equivalent opening.
- (l) *Fugitive Dust Emission Source* means where fugitive dust emissions are generated. It includes equipment or processes with that emit fugitive dust.
- (m) *Gravel Pad* means a layer of washed gravel or crushed rock that is at least one inch or larger in diameter, that is maintained at the point of intersection of an area accessible to the public and a work site exit to dislodge mud, dirt, and/or debris from the tires of motor vehicles and/or haul trucks, prior to leaving the work site. Minimum dimensions must be 30 feet wide by 3 inches deep, and 50 feet long or the length of the longest haul truck, whichever is greater. If an unpaved surface exit does not have adequate width to install a 30-foot wide gravel pad, then the width of the gravel pad must cover the full width of the unpaved surface exit and such shorter width must be adequate to prevent track out.
- (n) *Grizzly* means a device (i.e., rails, pipes, or grates) used to dislodge mud, dirt, and/or debris from the tires and undercarriage of motor vehicles and/or haul trucks prior to leaving the work site.
- (o) *Motorized Dirt Bike* means a two (2) wheeled vehicle being capable of cross-country travel on natural terrain without the benefit of a road.
- (p) *Normal Farming Practice(s)* means all activities by the owner, lessee, agent, independent contractor, and/or supplier conducted on any facility for the production of crops and/or nursery plants. Disturbances of the field surface caused by turning under stalks, tilling, leveling, planting, fertilizing, or harvesting are included in this definition.

- (q) *Opacity* means being "opaque," which means to prevent light from shining through. For example, in an emission point, the opacity level for some function might range from completely transparent (0) to completely opaque (100).
- (r) *Owner and/or Operator* means any person, individual, partnership, association, business, corporation, organized group of persons whether incorporated or not, or governmental entity who owns, leases, operates, controls, possesses, or supervises a fugitive dust source subject to the requirements of this Article.
- (s) *Private Driveway* means a place in allotted, assigned fee or with tribal ownership and used for vehicular traffic, individual utilities, and tribal services by the owner and those having express or implied permission from the land owner but not other persons. Private Driveway agreements should be in writing, and are subject to certain limitations:

Neither the allotted landowners nor the Salt River Pima-Maricopa Indian Community will be held responsible for construction or maintenance of said driveway and utilities. Construction and maintenance of the driveway and basic utilities is the sole responsibility of the home site owner.

The home site owner will be responsible for obtaining any necessary permits and clearances from the Salt River Pima-Maricopa Indian Community, such as Special Use Permit, Hauling Permit, Construction Permit, and Cultural & Environmental clearance.

The Private Driveway and Utility Corridor is valid for as long as the Home site legally exists, or until such time as the adjacent landowner(s) withdraw their written consent or until the Private Driveway is superseded by a public Roadway and Utility Easement.

The Salt River Pima-Maricopa Indian Community acknowledges Private Driveway Agreements; however, advises home site owners that tribal services, utility, and roadway improvements can only be guaranteed within current resource and regulatory limitations.

- (t) *Property line* means the boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property. Where such property is divided into one or more sub-tenancies, the property line(s) shall refer to the boundaries dividing the areas of all sub-tenancies
- (u) *Right of Way* means easement for passage or access upon or across the land of another. The acquisition of easements over Native American trust lands for transportation projects are subject to the regulations issued by the Bureau of Indian Affairs (BIA) in 25 CFR 169. A right of way easement becomes effective when the Grant of Easement document is signed by the Superintendent, Salt River Agency.

- (v) *Track-out* means any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that have fallen onto an area accessible to the public.
- (w) *Unpaved Haul/Access Road* means any on-site unpaved road used by commercial, industrial, institutional, and/or governmental traffic.
- (x) *Unpaved Parking Lot* means any area that is not paved and that is used for parking, maneuvering, equipment staging areas or storing motor vehicles. A unpaved parking lot includes, but is not limited to, automobile impound yards, wrecking yards, automobile dismantling yards, salvage yards, material handling yards, and storage yards.
- (y) *Unpaved Road* means any road or equipment path that is not paved. For the purpose of this Article, an unpaved road is not a horse trail, bicycle path, or other similar path used exclusively for purposes other than travel by motor vehicles.
- (z) *Wind –Blown Dust* means visible emissions, from any disturbed surface area, that are generated by wind action alone.
- (aa) *Work Site* means any property which any dust-generating operations occur

Sec. 18-98 Limitations and Standards

- (a) **Fugitive Dust/Fugitive Particulate Matter Emissions.**
 - (1) The owner or operator of any source of fugitive dust or fugitive particulate matter emissions including, but not limited to, any source or activity engaged in materials handling or storage, construction, lead shot removal, demolition, or any other operation which is or may be a source of fugitive particulate matter emissions shall take all reasonable precautions to prevent fugitive dust and fugitive particulate matter emissions release and shall maintain and operate the source to minimize fugitive dust and fugitive particulate matter emissions. Under no circumstances shall the owner or operator of any source of fugitive dust or fugitive particulate matter emissions allow visible emissions to exceed twenty (20) percent opacity. Compliance with this Sec.18-98 is based on documented compliance with the applicable federal new source performance standards (NSPS), the work practice requirements, the applicable requirements listed in Sec. 18-99, and the dust control measures listed below.
 - (2) Any owner and/or operator of any fugitive dust or fugitive dust matter emission source shall implement any applicable general dust control measure to minimize fugitive dust emissions.

General Dust control measures include, but are not limited to, the following:

- a. Use of water or dust suppressants for control of dust in the demolition of buildings or structures, construction operations, grading of roads, or clearing of land.
- b. Application of asphalt, water, or other suitable dust suppressants on unpaved roads, materials stockpiles, and other surfaces which can create airborne dust.
- c. Full or partial enclosure of materials stockpiles in cases where application of water, or dust suppressants is not sufficient or appropriate to prevent particulate matter from becoming airborne.
- d. Implementation of best management practices to avoid or minimize the accumulation of dusty materials which have the potential to become airborne. This includes, but is not limited to:
 1. Manual sweeping and use of industrial vacuum cleaners
 2. Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.
 3. Adequate containment during sandblasting or other similar operations.
 4. Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.
 5. Any unvegetated area must be watered down before ATV or motor bike usage as needed to limit dust
 6. The prompt removal from paved streets of earth or other material which may become airborne.

Sec. 18-99 CONTROL MEASURES FOR DUST-GENERATING OPERATIONS.

When engaged in a fugitive dust generating operation, the owner and/or operator shall install, maintain, and use control measures, as applicable. The owner and/or operator of the fugitive dust generating operation shall implement control measures before, after, and while conducting fugitive dust operations, including weekends, after work hours, and on holidays. At least two control measures must be identified in the Dust Control Plan, if applicable, for all dust generating sources. Control measures for specific dust-generating operations are described in Sec 18-99 (a)-(1).

- (a) **Easements, Rights-of-Way, and Access Roads for Utilities (Transmission of Electricity, Natural Gas, Oil, Water, and Gas)**: The owner and/or operator of a dust generating operation that involves an easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas) shall implement as least one of the following control measures:
- (1) Limit vehicle speed to 15 miles per hour or less and vehicle trips to no more than 20 per day per road; or
 - (2) Implement control measures described in Sec.18.99 (f) of this Article.
- (b) **Disturbed Surface Area**: The owner and/or operator of a dust generating operation that involves disturbed surface areas shall implement the following control measures, as applicable:
- (1) Before disturbed surface areas are created, implement one of the following control measures, as applicable:
 - a. Pre-water site to depth of cuts, allowing time for penetration; or
 - b. Phase work to reduce the amount of disturbed surface areas at any one time
 - (2) While disturbed surface areas are being created, implement the following control measures:
 - a. Apply water or suitable dust suppressant other than water;
 - b. Apply water to maintain a soil moisture content at a minimum of 7%, as determined by ASTM Method D2216-05 or other equivalent methods approved by EPNR.
 - (3) When the dust generating operation is idle and/or finished for a period of 30 days or longer the owner and/or operator shall implement one or more of the following measures within ten days following the completion of such dust generating operation:
 - a. Pave, apply gravel, or apply a suitable dust suppressant other than water;
 - b. Establish vegetative ground cover;
 - c. Implement control measures described in § 18-99 (3) a or § 18-99 (3) b of this Article and restrict vehicle access to the area;
 - d. Apply water and prevent access by fences, ditches, vegetation, berms, or other suitable barrier.
- (c) **Demolition Activities**: The owner and/or operator of a dust generating operation that involves demolition activities shall implement the following control measures:
- (1) Apply water to demolition debris immediately following demolition activity; and
 - (2) Apply water to all disturbed soils surfaces to establish a visible crust and to prevent wind erosion.
- (d) **Blasting Operations**: The owner and/or operator of a dust generating operation that involves blasting operations shall pre-water and maintain

surface soils in a stabilized condition where support equipment and vehicles will operate.

- (e) **Weed Abatement by Discing or Blading:** The owner and/operator of a dust generating operation that involves weed abatement by discing or blading shall comply with all the following control measures:
 - (1) Before weed abatement by discing or blading occurs, apply water;
 - (2) While weed abatement by discing or blading is occurring, apply water; and
 - (3) After weed abatement by discing or blading occurs, pave, apply gravel, apply water, apply a suitable dust suppressant other than water, or establish vegetative cover.

- (f) **Unpaved Haul/Access Roads:** The owner and/or operator of a dust generating operation that involves unpaved haul/access roads shall implement one or more of the following control measures:
 - (1) Apply water so that the surface is visibly moist;
 - (2) Pave;
 - (3) Apply and maintain gravel, recycled asphalt, or other suitable material;
 - (4) Apply and maintain a suitable dust suppressant other than water; or
 - (5) Limit vehicle trips to no more than 20 per day per road and limit vehicle speed to no more than 15 miles per hour. If complying with this section, the owner and/or operator shall provide to the EPNR the maximum number of vehicle trips on the staging areas, parking areas, and/or material storage areas per day (including number of employee vehicles, earthmoving equipment, haul trucks, and water trucks) and a description of how vehicle speeds will be restricted to no more than 15 miles per hour.

- (g) **Unpaved Staging Areas, Unpaved Parking Areas, and Unpaved Material Storage Areas:** The owner and/or operator of a dust generating operation that involves unpaved staging areas, unpaved parking areas, and unpaved material storage areas shall implement one or more of the following control measures:
 - (1) Apply water so that the surface is visibly moist;
 - (2) Pave;
 - (3) Apply and maintain gravel, recycled asphalt, or other suitable material;
 - (4) Apply and maintain a suitable dust suppressant other than water; or
 - (5) Limit vehicle trips to no more than 20 per day per road and limit vehicle speed to no more than 15 miles per hour. If complying with this section, the owner and/or operator shall provide to the EPNR the maximum number of vehicle trips on the staging areas, parking areas, and/or material storage areas per day (including number of employee vehicles, earthmoving equipment, haul trucks, and water trucks) and a description of

how vehicle speeds will be restricted to no more than 15 miles per hour.

- (h) **Open Storage Piles (including debris piles)**: The owner and/or operator of a dust generating operation that involves an open storage pile shall implement the following control measures, as applicable when not conducting stacking, loading, and unloading operations:
- (1) Cover all open storage piles with a tarp, plastic, or other material to prevent wind from removing the covering (s)/such that the covering (s) will not be dislodged by wind: or;
 - (2) Apply water to maintain a soil moisture content at a minimum of 7%, as determined by ASTM Method D2216-05 or other equivalent methods approved by EPNR; or
 - (3) Maintain a visible soil crust.
- (i) **Bulk Material Stacking, Loading, and Unloading Operations**: The owner and/or operator of dust generating operation that involves bulk material stacking, loading, and unloading operations shall implement the following control measures:
- (1) Mix material with water; or
 - (2) Mix material with a dust suppressant other than water.
- (j) **Bulk Material Hauling/Transporting When On-Site Hauling/Transporting Within the Boundaries of the Work Site and Crossing and/or Accessing a Paved Area Accessible to the Public**: The owner and/or operator of a dust generating operation that involves bulk material hauling/transporting when on-site hauling/transporting within the boundaries of the work site and crossing and/or accessing a paved area accessible to the public shall implement all of the following control measures:
- (1) Load all haul trucks such that the freeboard is not less than three inches;
 - (2) Load all haul trucks such that at no time shall the highest point of bulk material be higher than the sides, front, and back of a cargo container area;
 - (3) Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate (s); and
 - (4) When crossing and/or accessing a paved area accessible to the public, install, maintain, and use a suitable track out control device that controls and prevents track out and/or removes particulate matter from tires and exterior surfaces of haul trucks and/or motor vehicles that transverse the site.
- (k) **Bulk Material Hauling/Transporting When On-Site Hauling/Transporting Within the Boundaries of the Work Site but not Crossing a Paved Area Accessible to the Public**: The owner and/or operator of a dust generating operation that involves bulk material hauling/transporting when on-site hauling/transporting within the boundaries of the works site but not crossing a paved area accessible to the public shall implement one of the following control measures:
- (1) Limit vehicle speed to 15 miles per or less while traveling on the

- work site;
- (2) Apply water to the top of the load; or
- (3) Cover haul trucks with a tarp or other suitable closure.

(1) **Off-Site Hauling Onto Paved Areas Accessible to the Public:** The owner and/or operator of a dust generating operation that involves off-site hauling shall implement the following control measures:

- (1) When cargo compartment is loaded:
 - a. Load all haul trucks such that the freeboard is not less than three inches;
 - b. Load all haul trucks such that at no time shall the highest point of the bulk material be higher than the sides, front, and back of a cargo container area;
 - c. Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate (s); and
 - d. Cover cargo compartment with a tarp or other suitable closure.
- (2) When cargo compartment is empty:
 - a. Clean the interior of the cargo compartment; or
 - b. Cover the cargo compartment with a tarp or other suitable closure.
- (3) When off-site hauling, install, maintain, and use a suitable track out control devices that controls and prevents track out and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site.

Sec. 18-100 Track out, Carry-out, Spillage, and/or Erosion: The owner and/or operator of a dust generating operation shall prevent and control track out, carry-out, spillage, and/or erosion.

(a) **Track out Control Device**

- (1) Criterion for Track out Control Device: Install, maintain and use a suitable track out control device that prevents and controls track out and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site at all exits onto paved areas accessible to the public from both of the following:
 - a. All work sites where 100 cubic yards of bulk materials are hauled on-site and/or off-site per day; and
 - b. All work sites with a disturbed surface area of one acre or larger.

(b) **Control Measures:** For those work sites identified in Sec. 18-99 of this Article, prevent track out, carry-out, spillage, and/or erosion by implementing one of the following control measures

- (1) At all exits onto paved areas accessible to the public, install a wheel wash system;
- (2) All exits onto paved areas accessible to the public, install a gravel pad;
- (3) At all exits onto paved areas accessible to the public, install a grizzly or rumble grate that consists of raised dividers (rail, pipes, or grates) a minimum of three inches tall, six inches apart, and 20 feet long, to allow a vibration to be produced such that the dust is shaken off the wheels of a vehicle as the entire circumference of each wheel of the vehicle passes over the grizzly or rumble gate; or
- (4) Pave starting from the point of intersection with a paved area accessible to the public and extending for a centerline distance of at least 100 feet and a width of at least 20 feet.

Sec. 18-101 Clean Up of Track out:

- (a) Criterion for Clean Up of Track out: Clean up, track out, carry-out, spillage, and/or erosion from paved areas accessible to the public including curbs, gutters, and sidewalks, on the following time-schedule:
 - (1) No person shall allow track-out to extend 75 linear feet or more in cumulative length from the point of origin from an active operation. Notwithstanding the preceding, all track-out from an active operation shall be removed at the conclusion of each workday or evening shift.
- (b) Control Measures:
 - (1) Operate a street sweeper or wet broom with sufficient water, including but not limited to kick broom, steel bristle broom, Teflon broom, vacuum, at the speed recommended by the manufacturer and at the frequenc(ies) describe in the section of the Article; or
 - (2) Manually sweep up deposits to comply with this Sec. 18-101 of this Article.

Sec. 18-102 DUST CONTROL PLAN REQUIRED. The owner or operator of a fugitive dust source shall submit to EPNR a Dust Control Plan for operations which exceed one acre and receive dust control plan approval from the EPNR prior to conducting any earthmoving operations.

Failure to submit and obtain an approved Dust Control Plan prior to commencing earthmoving operations shall be a violation of Sec. 18-102. Compliance with this Sec. 18-102 does not affect a source's responsibility to comply with any other applicable tribal and federal requirements.

- (a) A Dust Control Plan shall, at a minimum, contain all the information described in subsection Sec.18-103 of this Article. EPNR shall approve, disapprove, or conditionally approve the Dust Control Plan, in accordance with the criteria. Failure to comply with the provisions of an

approved Dust Control Plan is deemed to be a violation of this Article VI.

- (b) Regardless of whether an approved Dust Control Plan is in place or not, the owner and/or operator of a fugitive dust source is still subject to all requirements of this Article at all times.
- (c) A Dust Control Plan shall not be required:
 - (1) For an existing ball field and/or landscape maintenance. For the purpose of Sec.18-102, landscape maintenance does not constitute earthmoving operations.
 - (2) To establish initial landscapes or to redesign existing landscapes of legally-designated Community parks and recreational areas, including national parks, national monuments, national forests, and tribal parks, hiking paths, horse trails, bicycle paths, ball fields, playgrounds at camp sites, and camp sites, which are used exclusively for purposes other than travel by motor vehicles. For the purpose of Sec.18-102, establishing initial landscapes or redesigning existing landscapes does not include earthmoving operations.

Sec. 18-103 **ELEMENTS OF A DUST CONTROL PLAN.** A Dust Control Plan shall contain, at a minimum, all of the following information:

- (a) Names, address(es), and phone numbers of person(s) responsible for the submittal and implementation of the Dust Control Plan and responsible for the dust generating operations.
- (b) A drawing or map, on at least 8½” x 11” paper, which shows:
 - (1) Entire project site boundaries, including boundaries of areas to be disturbed if less than the entire project site/facility boundaries;
 - (2) Acres to be disturbed with linear dimensions;
 - (3) Nearest public roads;
 - (4) North arrow;
 - (5) Planned exit locations onto areas accessible to the public; and
 - (6) Unpaved parking lot(s).
- (c) Control measures or combination thereof to be applied to all actual and potential fugitive dust sources, before, after, and while conducting any dust generating operations, including during weekends, after work hours, and on holidays.
 - (1) At least two control measures must be identified, from Sec.18-99, Sec.18-100, Sec.18-101 of this Article, as may be applicable, for all fugitive dust sources. Should any control measure(s)

prove ineffective, the owner and/or operator shall immediately implement an additional control measure(s), which requires submission of a revised Dust Control Plan to the EPNR Department .

- (2) Alternatively, a control measure(s) that is not in Sec.18-99, Sec.18-100, Sec.18-101 of this Article may be chosen, provided that the control measure is approved in writing by the EPNR Department and implemented by the owner and/or operator, in accordance with the appropriate test method in Sec.18.105 of this Article.
 - (3) If complying with subsection Sec.18-99 (f) (Unpaved Haul/Access Roads) of this Article, the plan must include the number of vehicles traveled on the unpaved haul/access roads (i.e., number of employee vehicles, earthmoving equipment, haul trucks, and water trucks).
- (d) Identification of the dust suppressants to be applied (if applicable), including:
- (1) Product specifications or label instructions for approved usage;
 - (2) Method, frequency, and intensity of application;
 - (3) Type, number, and capacity of application equipment; and
 - (4) Information on environmental impacts and approvals or certifications related to appropriate and safe use for ground application.
- (e) Specific surface treatment(s) and/or control measures utilized to control material track out and sedimentation where unpaved and/or access points join paved public roadways.

Sec. 18-104 DUST CONTROL PLAN REVISIONS:

- (a) If the activities related to the purposes for which the Dust Control Plan was obtained change, acreage of the project changes, plan holder changes, name(s), address (es), and/or phone numbers of person(s) responsible for the submittal and implementation of the Dust Control Plan and responsible for the dust generating operation change, the owner and/or operator shall request a Dust Control Plan revision and submit any updated Dust Control Plan to the EPNR Department.
- (b) If the EPNR department determines that an approved Dust Control Plan has been followed, yet fugitive dust emissions from any dust-generating operation still exceed the standards of this Article VI, then EPNR shall issue a written notice to the owner and/or operator of the dust generating operation explaining such determination.

- (c) The owner and/or operator of a dust generating operation shall make written revisions to the Dust Control Plan and shall submit such revised Dust Control Plan to EPNR within five working days of receipt of EPNR's written notice, unless such time period is extended by EPNR for good cause. During the time an owner and/or operator is preparing revisions to the approved Dust Control Plan, such owner and/or operator must still comply with all requirements of this Article.

Sec. 18-105 PROJECT INFORMATION SIGN. The owner and/or operator of a source shall erect a project or utilized a sign currently in place with information that is visible to the public, of all sites with Dust Control Plan that are one acre or larger. Such sign shall be a minimum contain the following information:

- (a) Project and owner and/or operator's name; and
- (b) Current Dust Control permit number;
- (c) Name and phone number of person(s) responsible for dust control matters; and
- (d) Text stating: "Complaints? Call EPNR at 480-362-7500 or email epnr@srpmic-nsn.gov."

Sec. 18-106 COMPLIANCE DETERMINATION. To determine compliance with this Article, the following test methods shall be followed:

- (a) Opacity/Stabilization Observations.
 - (1) Unpaved Parking Lots in an Industrial/Commercial Area. Stabilization observations for unpaved parking lots in industrial/commercial areas shall be conducted in accordance with Maricopa County Appendix C (Fugitive Dust Test Methods), Section 2.1 (Test Methods For Stabilization-For Unpaved Roads And Unpaved Parking Lots) of these sections. When more than one test method is permitted for a determination, an exceedance of the opacity limits established in this section determined by any of the applicable test methods constitutes a violation of this Article.
 - (2) Unpaved Haul/Access Road. Stabilization observations for unpaved haul/access roads (whether at a work site that is under construction or at a work site that is temporarily or permanently inactive) shall be conducted in accordance with Maricopa County Appendix C (Fugitive Dust Test Methods), Section 2.1 (Test Methods For Stabilization-For Unpaved Roads And Unpaved Parking Lots) of this section. When more than one test method is permitted for a determination, an exceedance of the

opacity limits established in this section determined by any of the applicable test methods constitutes a violation of this Article

- (3) Opacity shall be determined by observations of visible emissions conducted in accordance with EPA Test Method 9, 40 C.F.R. Part 60, Appendix A.
- (b) Test Methods Incorporated By Reference. The test methods listed in this Article are incorporated by reference. These incorporations by reference include any future editions or amendments. Copies of the test methods listed in this Article are available for review at the Environmental Protection and Natural Resources, 10005 Osborn Road, Scottsdale, Arizona 85256
- (1) Maricopa County Appendix C (Fugitive Dust Test Methods), Section 2.1 Adopted March 26, 2008 by Reference (Test Methods For Stabilization-For Unpaved Roads And Unpaved Parking Lots).
 - (2) Maricopa County Appendix C (Fugitive Dust Test Methods), Section 2.3 Adopted March 26, 2008 by Reference (Test Methods For Stabilization-Visible Crust Determination) (The Drop Ball/Steel Ball Test) for a visible crust.
 - (3) EPA Method 9-Visual Determination of the Opacity of Emissions from Stationary Sources.
 - (4) ASTM Method C136-06A (“Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates”), 2006 edition.
 - (5) ASTM Method D2216-05 (“Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass”), 2005 edition.
 - (6) ASTM Method D1557-07 (“Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/ft³ (2,700 kN-m/m³))), 2007 edition.
 - (7) Opacity of visible emissions from intermittent sources shall be determined by observations of visible emissions conducted in accordance with EPA Test Method 9, 40 C.F.R. Part 60, Appendix A.
 - (8) Alternative test methods may also be utilized if approved in writing by the EPNR and/or the Administrator of the EPA.

Sec. 18-107 COMPLIANCE AND ENFORCEMENT - ADMINISTRATIVE

- (a) When EPNR determines that a violation of any of the applicable provisions of this Article has been committed, an administrative compliance process shall be initiated by the issuance of a Notice of Violation (NOV) sent certified mail to the owner or operator within thirty days of the violation. Depending on the nature and seriousness of the violation, the EPNR Manager, at his/her discretion, shall determine whether or not the violation constitutes a fine or community service for ATVs and motorbikes. During the administrative compliance process, the EPNR Manager shall have the authority to determine the fine assessment on applicable violations. EPNR will consult with the Office of General Counsel (OGC) in carrying out this task.
 - (1) Administrative fines and penalties for violation of this Article shall not exceed five hundred dollars (\$500.00) for each such violation and for each day of its continuance which may constitute a separate violation.
- (b) EPNR's NOV will at minimum state the section(s) of the Article the owner or operator violated, corrective action to remedy the violation, and specify a time period for corrective action.
- (c) The owner or operator receiving the NOV may appeal the determination of the EPNR in writing to the Community Manager within five (5) business days from the date the NOV is received. A meeting on the appeal before the Community Manager shall take place within thirty (30) days from the date the appeal is received by the Community Manager. The decision of the Community Manager shall be final.
- (d) If the owner or operator fails to pay the administrative fine or fails to comply with this Article, EPNR shall initiate judicial proceedings by referring the violation to the Community's Office of General Counsel who may file civil proceedings against the violator in the Community's Tribal Court in accordance with the applicable laws of the Community.

Sec. 18-108 JUDICIAL PROCEEDINGS; COMMUNITY COURT

The Community Court shall have jurisdiction to hear all actions brought by the Office of General Counsel pursuant to Section 18-107(d) above, and may impose:

- (a) Civil fines and penalties for violation of this Article shall not exceed one thousand dollars (\$1,000.00) for each such violation and for each day of its continuance which may constitute a separate offense.
- (b) Other relief as may be available by law, which may include injunctive relief, the posting of bonds or sureties to ensure compliance.

Sec. 18-109 RECORDKEEPING. The owner or operator who conducts dust-generating operations that require a Dust Control Plan shall keep a daily written log recording the actual application or implementation of the control measures delineated in the approved Dust Control Plan. Any person who conducts dust-generating operations which do not require a Dust Control Plan shall compile and retain records that provide evidence of control measure application, by indicating the type of treatment or control measure, extent of coverage, and date applied. Upon verbal or written request by EPNR, the log or the records and supporting documentation shall be provided within 48 hours, excluding weekends. If the EPNR Director or his/her designee is at the site where requested records are kept, records shall be provided without delay. Records required by this Article must be kept for a period of five (5) years

Sec. 18-110 REMEDIES NOT EXCLUSIVE

The remedies listed in this Article VI are not exclusive of any other remedies available under any applicable federal, tribal, or local laws and is within the discretion of the Community to seek cumulative remedies.

Sec. 18-111 SEVERABILITY

If any provision of this Article VI is deemed unenforceable, the remainder of this Article VI shall continue in full force and effect

Sec. 18-112 EFFECTIVE DATE

This Article VI shall be in full force and effect from and after its passage and approval by the Community Council.

Sec. 18-113 to 18-115 RESERVED

**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
10005 East Osborn Road
Scottsdale, Arizona 85256**

ORDINANCE NUMBER: SRO-XXX-XX

TO AMEND CHAPTER 18, BY ADDING ARTICLE VII, RELATED TO AGRICULTURE FUGITIVE DUST-PRODUCING ACTIVITIES, TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES IN ITS ENTIRETY

BE IT ENACTED THAT:

The Salt River Pima-Maricopa Indian Community Code of Ordinances is hereby amended by adding a new Article VII, in its entirety, to be numbered as Chapter 18, Article VII, Sec. 18-116 through Sec. 18-123, as follows:

ARTICLE VII

Sec. 18-116 TITLE, AUTHORITY, PURPOSE, etc.

- (a) *Title.* This Article VII shall be known as the Salt River Pima-Maricopa Indian Community Agriculture Fugitive Dust Ordinance.
- (b) *Authority.* This Article VII is enacted pursuant to Article VII, Section 1(c)(1) , (c)(7), and (k) of the Salt River Pima-Maricopa Indian Community Constitution.
- (c) *Purpose/Policy.* The purpose of this Article VII is to regulate and mitigate Agricultural Fugitive Dust sources within the exterior boundaries of the Salt River Pima Maricopa Indian Community by minimizing the amount of particulate matter (PM) emitted into the ambient air as a result of the impact of human related activities through regulatory measures aimed to prevent, reduce, or mitigate particulate matter emissions.
- (d) *Scope.* This Article VII shall regulate the release of all Agricultural Fugitive Dust within the Salt River Pima-Maricopa Indian Community.
- (e) *Regulatory Authority.* The authority of the Salt River Pima Maricopa Indian Community, Community Development Department Director, or as may be delegated shall include the promulgation, issuance, and enforcement of regulations, policies, procedures, or rules, as may be necessary or appropriate for the implementation of this Article.

Sec 18-117 DEFINITIONS

The following definitions apply to this Section:

- (a) *Access restriction* means restricting or eliminating public access to non-cropland with signs or physical obstruction
- (b) *Aggregate cover* means gravel, concrete, recycled road base , caliche, or other similar material applied obstruction
- (c) *Artificial wind barrier* means a physical barrier to the wind
- (d) *Caliche* is a hardened deposit of calcium carbonate
- (e) *Carry-out/Trackout* means any and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that have fallen onto a paved public roadway.
- (f) *Cessation of night tilling* means the discontinuance of night tilling on high pollution advisory days during stagnant air conditions
- (g) *Chemical irrigations* means applying fertilizer, pesticide, or other agricultural chemicals to cropland through an irrigation system
- (h) *Combining tractor operations* means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass
- (i) *Community* means the Salt River Pima-Maricopa Indian Community (SRPMIC).
- (j) *Community Manager* means the SRPMIC Community Manager or his/her authorized representative.
- (k) *Cover crop* means plants or a green manure crop grown for seasonal soil protection or soil improvement
- (l) *Critical area planting* means using trees, shrubs, vines, grasses, or other vegetative cover on non-cropland
- (m) *Cropland means* land that is suited to or used for crops
- (n) *Cross wind ridges* means soil ridges formed by a tillage operation
- (o) *Cross wind strip cropping* means planting strips of alternating crops within the same field
- (p) *Cross wind vegetative strips* means herbaceous cover established in

one or more strips within the same field

- (q) *Environmental Protection and Natural Resources* means the Salt River Pima Maricopa Indian Community Environmental Protection and Natural Resources Office (EPNR). The person(s) authorized to act on behalf of the EPNR is the Community's Development Department Director or his/her authorized representative.
- (r) *Dust Suppressants* are those materials applied to a soil surface to prevent soil particles from becoming airborne. Examples include fiber based, calcium chloride, magnesium chloride, lignosulfonate, petroleum resin, and acrylic polymers, nonpetroleum based organics and ligninsulfonate
- (s) *Equipment modification* means modifying agricultural equipment to prevent or reduce fugitive dust from cropland
- (t) *Fugitive Dust* means particulate matter emissions made airborne by forces of wind, mechanical disturbances of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.
- (u) *Green chop* means harvesting of a forage crop without allowing it to dry in the field
- (v) *Integrated pest management* means the use of a combination of techniques including organic, conventional and biological practices
- (w) *Limited activity during a high-wind event* means performing no tillage or soil preparation activity when the measured winds peak at six feet height is more than twenty five mile per hour at the farm site
- (x) *Manure application* means applying animal waste or biosolids to a soil surface
- (y) *Mulching* means applying plant residue or other material that is not produced on site to a soil surface
- (z) *Multi-year crop* means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than a year
- (aa) *Non-cropland* means any land that does not meet the definition of cropland including unpaved roads and buffer strips
- (bb) *Owner and/or Operator* means any person who owns leases, operates, controls, or supervises a fugitive dust source subject to the requirements of this ordinance
- (cc) *Permanent cover* means a perennial vegetative cover on cropland

- (dd) *Planting based on soil moisture* means applying water to soil before performing planting operations
- (ee) *Precision farming* means using global positioning system (GPS) to precisely guide farm equipment in the field
- (ff) *Reduced harvest activity* means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field
- (gg) *Reduced tillage system* means reducing the number of tillage operations used to produce a crop
- (hh) *Reduced vehicle speed* means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed fifteen miles per hour
- (ii) *Residue management* means managing the amount and distribution of crop and other plant residues on a soil surface
- (jj) *Sequential cropping* means growing crops in a sequence that minimizes the amount of the time bare soil is exposed on a field
- (kk) *Surface roughening* means manipulating a soil surface to produce or maintain clods
- (ll) *Tillage based on soil moisture* means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation
- (mm) *Tillage & Harvest* means arable land that is worked by plowing and sowing, raising crops and the yield from plants in a single growing season
- (nn) *Timing of tillage operation* means performing tillage operations at a time that will minimize the soil's susceptibility to generate fugitive dust emissions
- (oo) *Transgenic crops* means the use of plants that are genetically modified
- (pp) *Tree, shrub, or windbreak planting* means providing a woody vegetative barrier to the wind
- (qq) *Watering* means applying water to non-cropland

Sec 18-118 APPLICABILITY

- (a) This Article limits particulate matter (PM) emissions into the ambient air from any agriculture property, operation, activity, or land use that may serve as an agricultural fugitive dust source.

- (b) *Dust Control Measures and Requirements.* The owner and/or operator who farms more than five (5) contiguous acres of land within the Salt River Pima Maricopa Indian Community must complete an agricultural fugitive dust general plan for each location and shall employ two of the following dust control measures for each category at each location (if applicable). All general plans shall identify, at minimum, the contact information for the owner and/or operator, the location, the dust control source(s), and the measures to be taken before, after, and while conducting any dust generating activity; and must be submitted to the EPNR Department within five days prior to agriculture dust activity. The EPNR shall approve, disapprove, or conditionally approve the general plan, in accordance with the requirements herein within five days of receipt of the general plan.

(1) Tillage and harvest

- a. cessation of night tilling
- b. chemical irrigation
- c. combining tractor operations
- d. equipment modification
- e. green chop
- f. integrated pest management
- g. limited activity during high-wind events
- h. multi-year crop
- i. planting based on soil moisture
- j. precision farming
- k. reduced harvest activity
- l. reduced tillage system
- m. tillage based on soil moisture
- n. timing of tillage operations
- o. transgenic crops

(2) Non-cropland

- a. access restriction
- b. aggregate cover
- c. artificial wind-barrier
- d. critical area planting
- e. manure application
- f. reduce vehicle speed
- g. dust suppressants approved by Environmental Protection and Natural Resources Division
- h. track-out control system
- i. tree/shrub/windbreak planting
- j. watering

(3) Cropland

- a. artificial wind barrier
- b. cover crop
- c. crosswind ridges
- d. crosswind strip cropping

- e. crosswind wind vegetative strip
 - f. integrated pest management
 - g. manure application
 - h. mulching
 - i. multi-year crop
 - j. permanent cover
 - k. planting based on soil moisture
 - l. residue management
 - m. sequential cropping
 - n. surface roughening
 - o. transgenic crops
 - p. trees/shrub/windbreak planting
- (c) Should any single control measure(s) prove ineffective, the owner and/or operator shall immediately implement additional control measure(s), which may require submitting a revised general plan to the EPNR Division.
- (d) *Dust Control Records.* The owner and/or operator must keep records detailing the dust control measures selected for each category. The owner and/or operator must make available the records to the Environmental Protection & Natural Resources Division within three business days of the notice to the owner and/or operator.
- (e) *Fee.* No fee is associated with the agriculture fugitive dust general plan.
- (f) *Violations.* Failure to comply with the provisions of this Sec. 18-118, or an approved fugitive dust general plan is deemed to be a violation of this Article VII.

Sec 18-119 COMPLIANCE AND ENFORCEMENT - ADMINISTRATIVE

- (a) When EPNR determines that a violation of any of the applicable provisions of this Article has been committed, an administrative compliance process shall be initiated by the issuance of a Notice of Violation (NOV) sent certified mail to the owner or operator within thirty days of the violation. Depending on the nature and seriousness of the violation, the EPNR Manager, at his/her discretion, shall determine whether or not the violation constitutes a fine. During the administrative compliance process, the EPNR Manager shall have the authority to determine the fine assessment on applicable violations. The EPNR will consult with the Office of General Counsel (OGC) in carrying out this task.
- (1) Administrative fines and penalties for violation of this Article shall not exceed five hundred dollars (\$500.00) for each such violation and for each day of its continuance which may constitute a separate violation.

- (b) EPNR's NOV will at minimum state the section(s) of the Article the owner or operator violated, corrective action to remedy the violation, and specify a time period for corrective action.
- (c) *Appeal Process.* The owner or operator receiving the NOV may appeal the determination of the EPNR in writing to the Community Manager within five (5) business days from the date the NOV is received. A meeting on the appeal before the Community Manager shall take place within thirty (30) days from the date the appeal is received by the Community Manager. The decision of the Community Manager shall be final.
- (d) If the owner or operator fails to pay the administrative fine or fails to comply with this Article, the EPNR shall initiate judicial proceedings by referring the violation to the Community's Office of General Counsel who may file civil proceedings in the Community's Tribal Court in accordance with the applicable laws of the Community.

Sec. 18-120 JUDICIAL PROCEEDINGS; COMMUNITY COURT

- (a) The Community Court shall have jurisdiction to hear all actions brought by the Office of General Counsel pursuant to Section 18-119(d) above or other applicable law, and may impose:
 - (1) Civil fines and penalties for violation of this Article shall not exceed one thousand dollars (\$1,000.00) for each such violation and for each day of its continuance which may constitute a separate offense.
 - (2) Other relief as may be available by law, which may include injunctive relief, the posting of bonds or sureties to ensure compliance.

Sec. 18-121 REMEDIES NOT EXCLUSIVE

The remedies listed in this Article VII are not exclusive of any other remedies available under any applicable federal, tribal, or local laws and is within the discretion of the Community to seek cumulative remedies.

Sec. 18-122 SEVERABILITY

If any provision of this Article VII is deemed unenforceable, the remainder of this Article VII shall continue in full force and affect

Sec. 18-123 EFFECTIVE DATE

This Article VII shall be in full force and effect from and after its passage and approval by the Community Council.