

**TITLE 8 - REGULATORY CODE  
PART V- PUBLIC HEALTH  
CHAPTER 5-2- HEALTH AND SANITATION**

**TABLE OF CONTENTS**

<b>SUBCHAPTER A</b>		<b>PREAMBLE</b>	
Section 10	Authority .....		1
Section 20	Findings .....		1
Section 30	Purpose .....		2
<b>SUBCHAPTER B</b>		<b>GENERAL PROVISIONS</b>	
Section 40	Short Title; Codification .....		2
Section 50	Applicability .....		2
Section 60	Sovereign Immunity Unaffected .....		3
<b>SUBCHAPTER C</b>		<b>DEFINITIONS</b>	
Section 70	Definitions .....		3
<b>SUBCHAPTER D</b>		<b>DUMPING</b>	
Section 80	Dumping .....		5
Section 90	Burning .....		5
Section 100	Improper Storage .....		5
Section 110	Collection .....		5
Section 120	Improper Transportation .....		5
Section 130	Landfills .....		6
Section 140	Importing Waste .....		6
Section 150	Hazardous Waste .....		6
Section 160	Obstruction .....		6
<b>SUBCHAPTER E</b>		<b>PROSPECTIVE REPEAL OF ESISTING ILLEGAL DUMPING PROVISIONS AND RESERVATION OF RIGHTS</b>	
Section 170	Prospective Repeal .....		6
Section 180	No Discharge From Past Offenses .....		6
<b>SUBCHAPTER F</b>		<b>ADMINISTRATION OF SOLID WASTE MANAGEMENT</b>	
Section 190	Collection Services; Contracts and Licensure .....		6
<b>SUBCHAPTER G</b>		<b>RECYCLING FACILITIES AND TRANSFER STATIONS; PERMITS</b>	
Section 200	Operating Requirement .....		7
<b>SUBCHAPTER H</b>		<b>OPEN DUMPS</b>	
Section 210	Closure of Open Dumps .....		8
<b>SUBCHAPTER I</b>		<b>VIOLATIONS; CIVIL ENFORCEMENT</b>	
Section 220	Violations .....		9
Section 230	Compliance Orders .....		9
Section 240	Civil Penalties .....		10
Section 250	Injunctive Relief .....		10
Section 260	Denial or Revocation of Permit or License .....		10
Section 270	Coordination with Off-Reservation Authorities .....		11
<b>SUBCHAPTER J</b>		<b>CRIMINAL ENFORCEMENT</b>	
Section 280	Criminal Enforcement Referral Procedures .....		11

<b>SUBCHAPTER K</b>		<b>APPEALS</b>	
Section 290	Applicability .....		11
Section 300	Judicial Review of Final Administrative Decisions .....		12
Section 310	Appellate Review .....		12
Section 320	Rules of Civil Procedures .....		12
<b>SUBCHAPTER L</b>		<b>INDEMNIFICATION</b>	
Section 330	Effective Date .....		12
<b>SUBCHAPTER M</b>		<b>SEVERANCE</b>	
Section 340	Severability .....		13
<b>SUBCHAPTER N</b>		<b>EFFECTIVE DATE</b>	
Section 350	Effective Date .....		13
Section 360	Compliance Transition for Facilities Requiring Permits .....		13
Section 370	Contracts .....		13

**TITLE 8-REGULATORY CODE  
PART V -PUBLIC HEALTH  
CHAPTER 5-2- HEALTH AND SANITATION**

*Legislative History: Enacted and Established July 28, 1982 by Resolution No. C-31-852 and Ordinance No. 5 as part of Law & Order Code.*

*Amended on January 10, 1990 on Resolution No. C1-67-90*

*Amended on October 4, 1990 by Resolution No. C10-2-90.*

*Amended on March 17, 1990 by Resolution No. C03-90-90.*

*Adopted tribal codes and rescinded all other conflicting codes on May 26, 1992 by Resolution No. C5-42-92.*

*Adopted January 28, 2003 as Pascua Yaqui Code and rescinded all prior code by Resolutin No. C01-04-03.*

*Recodified on August 9, 2006 by Resolution No. C08-313-06.*

*Amended on July 22, 2009 by Resolution No.C07-123-09 and Ordinance No. 14-09.*

**SUBCHAPTER A PREAMBLE**

**Section 10 Authority (8 PYTC § 5-2-10)**

- (A) It is within the inherent sovereign authority of the Pascua Yaqui Tribe to maintain the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe.
- (B) The authority to manage and regulate the storage, collection, handling, transportation, treatment and disposal of solid waste on the Reservation inherently lies within the retained sovereign power of the Tribe.
- (C) The Tribe has the authority to enact legislation to manage solid waste on the Reservation pursuant to the Constitution of the Pascua Yaqui Tribe, under its inherent civil legislative, adjudicative and regulatory authority pursuant to the express delegation of authority by Congress under the Indian Reorganization Act (25 U.S.C. §§ 461 et seq.), which provided the Tribe authority to organize, adopt the Constitution of the Pascua Yaqui Tribe and enact ordinances governing conduct on the Reservation, (25 U.S.C. § 476), and as described in *Montana v. United States*, 450 U.S. 544 (1981).

**Section 20 Findings (8 PYTC § 5-2-20)**

- (A) The increasing volume of solid waste being generated on or brought to the Reservation has created or may create conditions that threaten the environment and public health, safety and welfare of Tribal members and residents of the Reservation, and the improper disposal of such waste contributes to land, air and water pollution, the production of insects, vermin and litter, unsightly conditions, and the general deterioration of the Reservation environment.
- (B) Existing solid waste management practices, including a scourge of illegal dumping on the Reservation, are adverse to the public interest in eliminating pollution, protecting the land, and conserving natural and cultural resources.

- (C) Non-Tribal members engaged in conduct or activities on the Reservation pursuant to a lease, agreement or contract have explicitly or implicitly agreed to the jurisdiction of the Tribe and its courts and are subject to the laws, ordinances and regulations of the Tribe.
- (D) Improper solid waste disposal, collection, transportation and handling, if left unregulated, pose an imminent threat to the environment, natural resources, public health, safety, welfare, political integrity and economic security of the Tribe.

**Section 30 Purpose (8 PYTC § 5-2-30)**

- (A) Protect the health and safety of Tribal members and all other persons within the exterior boundaries of the Reservation;
- (B) Protect the historic resources and cultural values and traditions of the Tribe;
- (C) Protect air, water, and land from solid waste pollution, including contamination of the Reservation’s aquifers, surface waters, drinking water sources, and all other natural resources;
- (D) Provide for the cleanup of existing illegal dumps and promote recycling and reuse of discarded materials; and
- (E) Regulate and enforce environmental standards for the cleanup, storage, collection, transfer and disposal of solid waste and recyclable material.

**SUBCHAPTER B GENERAL PROVISIONS**

**Section 40 Short Title; Codification (8 PYTC § 5-2-40)**

This Ordinance shall be known as the Pascua Yaqui Tribe Solid Waste Ordinance (the "Ordinance").

**Section 50 Applicability (8 PYTC § 5-2-50)**

- (A) The provisions of this Ordinance shall apply to:
  - (1) All persons on the Reservation, without exception, including members of the Pascua Yaqui Tribe, all non-member Indians, all non-Indians, and any other person as defined herein, including businesses and enterprises;
  - (2) All persons who enter into a business relationship with the Tribe or its members through commercial dealings, contracts, leases, or other arrangements, including for-profit and not-for-profit activities; and
  - (3) All places and lands located anywhere within the Reservation, including all trust and non-trust lands, and notwithstanding the issuance of any patent, fee, allotment, right-of-way, lease, or real property interest of any kind.
- (B) Any person who is on the Reservation, whether on trust or non-trust lands, is subject to, and must comply with, this Ordinance and any rules and regulations promulgated hereunder. All such persons shall be deemed to have consented to the civil jurisdiction of the Tribal Court, and shall be subject to civil prosecution, civil penalties, civil damages, or any other civil remedies imposed for any violations of this Ordinance.

**Section 60 Sovereign Immunity Unaffected (8 PYTC § 5-2-60)**

- (A) Nothing in this Ordinance shall be construed as, or is intended to be, a waiver or modification of any sovereign immunity now enjoyed by the Tribe, or consent by the Tribe to jurisdiction or suit against it.
- (B) The Tribe, the Tribal Council and its members; and all other Tribal officers, employees, representatives, or agents thereof, who are performing their duties by implementing or enforcing this Ordinance are immune from suit for monetary damages in any court of law for their actions or inaction related to such implementation or enforcement, and they do not waive any of their sovereign rights or immunities, executive privileges or right to privacy or confidentiality.

**SUBCHAPTER C DEFINITIONS**

**Section 70 Definitions (8 PYTC § 5-2-70)**

(A) Unless otherwise provided, the definitions set forth in this Section shall apply to this Ordinance. In the event of a conflict with any other definition in the Tribal Code, the definition herein shall govern the construction of this Ordinance only.

- (1) “Aquifer” means a geological formation that contains sufficient saturated materials to be capable of yielding or transmitting water in usable quantities to a well.
- (2) “Appealable agency action” means an action that is subject to administrative appeal pursuant to this Ordinance.
- (3) “Attorney General” means the Attorney General of the Pascua Yaqui Tribe.
- (4) “Bulky Waste” means large items of refuse including, but not limited to, appliances, furniture, vehicles, large auto parts, non-hazardous construction and demolition material, trees, branches and stumps which cannot be handled by normal solid waste processing, collection and disposal methods.
- (5) “CFR” means the Code of Federal Regulations in its most current form.
- (6) “Collection” means the physical aggregating of solid waste from its place of generation and includes all activities up to such time as the waste is delivered to a facility for transfer, processing, treatment, or disposal.
- (7) “Compliance Order” means an order issued by the enforcement authority to a violator, and may include, without limitation, orders to comply with this Ordinance or permit requirements within a specified time limit, to cease and desist specified activities, or to take such remedial or preventive action as may be needed to address a continuing or threatened violation.
- (8) “Disposal” or “dispose of” means the discharge, abandonment, deposit, injection, dumping, littering, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water.
- (9) “Enforcement Authority” means a Tribal entity authorized by the Tribal Council to enforce all or part of this Ordinance.
- (10) “EPA” means the United States Environmental Protection Agency.

- (11) “Guidance document” means a document prepared by authorized staff that supplements this Ordinance. A guidance document may provide specific technical direction regarding the manner in which a person shall comply with this Ordinance.
- (12) “Hazardous waste” means any solid, liquid, or contained gaseous material for disposal or recycling that poses significant potential harm to human health or environmental quality, including but not limited to material specifically defined as hazardous or toxic by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or the Resource Conservation and Recovery Act of 1976, and any regulations promulgated thereunder, or is toxic, ignitable, reactive, or corrosive, as defined and regulated by the Tribe or the United States of America.
- (13) “Household Hazardous Waste” means discarded hazardous materials found in residential homes, usually in small amounts, that pose potential to harm human health or environmental quality. Examples include paint, pesticides, cleaning supplies and batteries.
- (14) “Landfill” means any discrete area of land or an excavation where solid waste is disposed via confinement with controls to restrict access to or movement of such waste.
- (15) “Open burning” means the combustion of any solid waste or other discarded materials 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. For purposes of this Ordinance, open burning does not include the burning of non-toxic material for recognized ceremonial or religious purposes.
- (16) “Open dump” means any facility, site or area where solid waste has been disposed of, which is not a landfill or transfer station.
- (17) “Ordinance” means this Ordinance, unless reference to another ordinance of the Tribe is clearly indicated.
- (18) “Permit” means an authorization and license issued under this Ordinance.
- (19) “Permittee” means the holder of a permit under this Ordinance.
- (20) “Person” means any individual, trust, firm, association, partnership, Indian Tribe, tribally chartered corporation or business, political subdivision, government agency, municipality, industry, public or private corporation, any legal entity or private enterprise, and includes members of the Tribe, all other non-member Indians, and all non-Indians.
- (21) “Recycling” means the process of collecting, separating, cleansing treating, and reconstituting post-consumer materials that would otherwise become solid waste and returning them to the economic stream in the form of raw material for reconstituted products which meet the quality standards necessary to be used in the marketplace.
- (22) “Reservation” means the Pascua Yaqui Tribe Reservation established pursuant to the Act of September 18, 1978 (Public Law 95-375; 92 Stat. 712), and includes all lands of any kind within the exterior boundaries of the Reservation, all lands outside such boundaries held in trust for the Tribe or any of its members by the United States.

- (23) "Solid waste" means any garbage, trash, rubbish, litter, or refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded materials, including solid, liquid, semi-solid, or contained gaseous material, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- (24) "State" means the State of Arizona.
- (25) "Transfer Station" means a location at which transferring of solid waste from one vehicle or container to another, generally of larger capacity, occurs prior to transporting to the point of processing or disposal.
- (26) "Tribal Council" means the Pascua Yaqui Tribal Council.
- (27) "Tribe" means the Pascua Yaqui Tribe.\

**SUBCHAPTER D ILLEGAL DUMPING AND OTHER PROHIBITED ACTIVITIES**

**Section 80 Dumping (8 PYTC § 5-2-80)**

No person may dispose of, dump, scatter, or place, or cause to be disposed of, dumped, scattered, or placed, any solid waste or hazardous waste on, at or near an open dump anywhere within the exterior boundaries of the Reservation, including on one's residence or business, or at any location whether on or off the Reservation that allows such waste to blow or wash onto or otherwise enter the Reservation.

**Section 90 Burning (8 PYTC § 5-2-90)**

No person may cause the open burning of any material on the Reservation, except as specifically authorized. For purposes of this Ordinance, open burning does not include the burning of non-toxic material for recognized ceremonial or religious purposes.

**Section 100 Improper Storage (8 PYTC § 5-2-100)**

No person shall place or deposit solid or hazardous waste on any street, road or alley within the Reservation. No person shall allow solid or hazardous waste to accumulate uncontrolled on premises under such person's control or authority. The owner, agent or occupant of a dwelling, residence, premises or business establishment shall be responsible for maintaining their place of residence, business, or property free of accumulated litter, refuse, and bulky waste and for the proper storage and stockpiling of all solid waste for collection.

**Section 110 Collection (8 PYTC § 5-2-110)**

No persons other than those designated shall collect solid waste or hazardous waste from within the Reservation, except that a person may collect solid waste from such person's own residence for transportation to a landfill, transfer station, or recycling center if suitable waste disposal services are not otherwise provided or available.

**Section 120 Improper Transportation (8 PYTC § 5-2-120)**

No person may transport solid waste or hazardous waste within the Reservation unless the waste is covered, tied or otherwise secured so it will not be blown or dropped from the transport vehicle.

**Section 130 Landfills (8 PYTC § 5-2-130)**

No person may construct or operate a landfill within the exterior boundaries of the Reservation.

**Section 140 Importing Waste (8 PYTC § 5-2-140)**

No person may dispose of, dump, scatter, or place, or cause to be disposed of, dumped, scattered, or placed, anywhere on the Reservation any solid waste or hazardous waste generated outside of the Reservation, except as may be authorized by the Tribal Council.

**Section 150 Hazardous Waste (8 PYTC § 5-2-150)**

No person may handle, store, treat, transport, re-use, or dispose of hazardous waste within the Reservation except in compliance with all applicable federal laws and regulations published in the United States Code and CFR.

**Section 160 Obstruction (8 PYTC § 5-2-160)**

No person may willfully obstruct or interfere with the Tribe, or any of its representatives in their investigations and performance of their duties under this Ordinance.

**SUBCHAPTER E PROSPECTIVE REPEAL OF EXISTING ILLEGAL DUMPING PROVISIONS AND RESERVATION OF RIGHTS**

**Section 170 Prospective Repeal (8 PYTC § 5-2-170)**

Upon the effective date of this Ordinance, the provisions hereof shall supersede and replace Pascua Yaqui Code Title 8, Part V, Chapter 5-2, Section 20 (8 PYTC § 5-2-20), which is hereby repealed as to all new dumping and waste disposal activities, provided that 8 PYTC § 5-2-20 shall remain in full force and effect with respect to any violation of the Pascua Yaqui Code which occurred prior to the effective date of this Ordinance and shall remain in full force and effect as to prior and subsequent violations in the event this Ordinance is held by a final court decision to be invalid in whole or in relevant part.

**Section 180 No Discharge From Past Offenses (8 PYTC § 5-2-180)**

No offense committed, and no fine, forfeiture or penalty incurred previous to the time when the provisions of this Ordinance become effective shall be affected, released, or in any way discharged by such repeal, and such offenses may be prosecuted as fully and to the same extent as if such repeal had not been effected.

**SUBCHAPTER F ADMINISTRATION OF SOLID WASTE MANAGEMENT**

**Section 190 Collection Services; Contracts and Licensure (8 PYTC § 5-2-190)**

- (A) The Tribal Procurement Office may enter written agreements with private, municipal, or county collection operators to collect and remove waste from the Reservation. Before operating on the Reservation, such operators shall obtain a license that, at a minimum, shall include the following requirements and conditions:
  - (1) The operator shall submit proof that it has adequate financial resources and experience to properly conduct the services for which it is retained, including but not limited to the following:

- (i) The filing of a performance bond or equivalent security with the Tribe in an amount to be determined;
  - (ii) Other evidence requested that the operator has sufficient experience to perform the services for which the operator is retained.
- (2) All vehicles and equipment used for the collection or transportation of solid waste shall be durable, designed for safe handling, and constructed to minimize noise and prevent loss of solid waste from the equipment during collection or transportation. Vehicles and equipment shall be maintained in good condition and cleaned in a frequency and manner adequate to prevent the creation of nuisances. Vehicles and equipment shall be clearly marked with the name and telephone number of the operator, and shall be covered by sufficient insurance for liability, personal injury, and damage.
  - (3) Collection operations shall occur only during the hours of 6:00 A.M. to 4:00 P.M., except as specifically authorized by the Tribe.

**SUBCHAPTER G RECYCLING FACILITIES AND TRANSFER STATIONS; PERMITS**

**Section 200 Operating Requirements (8 PYTC § 5-2-200)**

- (A) No person may operate or maintain a recycling facility or transfer station except in conformance with an approved Plan of Operation and the following operational requirements, at a minimum:
  - (1) A sign shall be prominently posted at the entrance to the recycling facility or transfer station including but not limited to the name, license number, hours of operation, waste types accepted, necessary safety precautions, and any other pertinent information.
  - (2) If wastewater is generated, it shall be collected and treated at a wastewater treatment facility permitted to accept it.
  - (3) The recycling facility or transfer station shall be operated under the direct supervision of responsible individuals who are thoroughly familiar with, and qualified to implement, the requirements and the operational procedures of the recycling facility or transfer station.
  - (4) The recycling facility or transfer station shall have an adequate perimeter barrier designed to discourage unauthorized entry by persons or vehicles.
  - (5) Unloading of solid waste may take place only within approved designated areas and into appropriate containers.
  - (6) The recycling facility or transfer station and adjacent area shall be kept clean and free of litter.
  - (7) The operator shall take all necessary measures to prevent the propagation, harborage, or attraction of animals or disease vectors and to minimize bird problems.
  - (8) The recycling facility or transfer station shall institute and maintain measures to ensure the health and safety of the public, including but not limited to the following:
    - (i) Provision of adequate sanitary facilities, safe and adequate drinking water for station personnel, and adequate communications facilities;

- (ii) Provision of adequate lighting to insure safety, to permit monitoring of the effectiveness of cleaning, and to permit the inspection of loaded transfer vehicles;
  - (iii) Provision of adequate fire suppression equipment;
  - (iv) Provision of railings, curbs, grates, and fences as necessary to contain the waste material within the site and minimize contact between the public and solid waste.
- (9) Dust and odor generated by the unloading of solid waste and the operation of the recycling facility or transfer station shall be controlled at all times.
- (10) Recycling facility and transfer station records shall be open to inspection. At a minimum, the records shall include the following information:
- (i) Volume Records. The operator shall maintain accurate records of weights and volumes of solid waste handled.
  - (ii) Special Occurrences. The operator shall maintain a log of the following: fires, personal injury, property damage, accidents, explosions, deliveries or discharges of hazardous waste, flooding, vandalism, contamination, pollution, and other unusual occurrences.
- (11) The following wastes shall not be accepted at any transfer station or recycling facility: hazardous waste except for household hazardous waste, sewage solids, sludge, asbestos, waste containing free liquids, explosive or flammable waste, and waste that is burning.
- (12) The operator shall implement a program to detect and prevent the acceptance, handling, storage, processing, and recycling of hazardous waste other than household hazardous waste. This program may include:
- (i) Random inspections of incoming loads;
  - (ii) Inspection of suspicious loads;
  - (iii) Maintenance of records of inspections;
  - (iv) Training of personnel to recognize hazardous waste;
  - (v) Procedures for notifying the Tribe if hazardous waste is discovered and for properly characterizing and handling such hazardous waste.
- (13) The operator shall develop a program for the acceptance of household hazardous waste in consultation with the Tribe.

**SUBCHAPTER H OPEN DUMPS**

**Section 210 Closure of Open Dumps (8 PYTC § 5-2-210)**

- (A) Existing open dumps shall be closed in accordance with the following requirements:

- (1) All fires shall be extinguished;
- (2) All rats and other vermin, if present, shall be exterminated by qualified personnel;
- (3) All solid waste shall be examined for potential hazardous qualities, consolidated and removed for proper disposal following opportunity for enforcement authorities to inspect such waste to identify its origins and the parties responsible for creating or adding to the open dump;
- (4) A final grading and revegetation plan shall be designed to restore the former dump area to an appropriate desert landscape consistent with prior existing natural conditions and native plants, to ensure proper drainage and to avoid ponding of surface water, shall be submitted for approval, and shall be implemented upon approval; and
- (5) The exact location of the site, including GPS coordinates if available, shall be recorded and such data shall be kept by the Land Department.

## **SUBCHAPTER I VIOLATIONS; CIVIL ENFORCEMENT**

### **Section 220 Violations (8 PYTC § 5-2-220)**

A person shall not dump or dispose of solid waste in violation of any provision of this Ordinance, shall not act or cause another to act in a manner prohibited by this Ordinance, shall not operate a solid waste transfer station or recycling center without a permit or in any manner inconsistent with the provisions of this Ordinance and any facility plan or permit issued or approved hereunder, and shall not otherwise engage in activities prohibited by this Ordinance and any regulations, rules, permits, or licenses issued hereunder. A person who commits any violation of the provisions of this Ordinance or any regulation, rule, permit, or license issued hereunder, shall be subject to enforcement.

### **Section 230 Compliance Orders (8 PYTC § 5-2-230)**

- (A) If enforcement authority has reasonable cause to believe that any person has violated or is in violation of any provision of this Ordinance, or any requirement of a permit issued pursuant to this Ordinance, the enforcement authority may issue a Compliance Order requiring compliance immediately or within a specified period of time.
- (B) A Compliance Order shall state with reasonable specificity the nature of the violation, the requirement, provision, or section violated, and a reasonable time for compliance.
- (C) A Compliance Order shall be transmitted to the alleged violator by certified mail, return receipt requested or by hand delivery.
- (D) A Compliance Order becomes final and enforceable in the Tribal Court. If enforcement authority has reason to believe that a substantial risk of serious injury to persons or the environment is occurring or is imminent, the Tribe may require immediate action or abatement and may apply for immediate injunctive relief as provided by this Ordinance.
- (E) The Attorney General shall file an action in Tribal Court to enforce the Compliance Order issued pursuant to this subsection if the violator has not complied with the Order. Any person to whom a compliance order is issued who fails to take corrective action within the time specified in said order shall be liable for a civil penalty to be assessed by the enforcement authority.

**Section 240 Civil Penalties (8 PYTC § 5-2-240)**

- (A) Civil Penalties. Any person who is in violation of this Ordinance, any rule or regulation promulgated hereunder, a Compliance Order, or any permit, plan, approval or license issued pursuant to this Ordinance, shall be subject to a civil penalty of up to \$5,000 per day for each violation, plus actual damages. Vehicles and equipment used to commit acts which violate any provision of this Ordinance are subject to immediate confiscation, impoundment, and forfeiture, and may be used to offset fines or penalties.
- (B) Recovery of Penalties. At the request of the enforcement authority, or at its own initiative, the Attorney General may file an action in Tribal Court to recover penalties provided for in this Section. All penalties recovered by the Tribe, or by any enforcement authority on its behalf, shall be used to defray the costs of enforcement
- (C) Penalty Assessment Criteria. In determining the amount of a civil penalty under this Section, the Tribal Court, as appropriate, shall consider the following factors:
  - (1) The size of the business or financial resources of the person(s) responsible for the violation;
  - (2) The economic impact of the penalty on the business or person;
  - (3) The violator’s full compliance history and good faith efforts to comply;
  - (4) The duration of the violation as established by any credible evidence;
  - (5) Payment by the violator of penalties previously assessed for the same violation;
  - (6) The economic benefit of noncompliance; and
  - (7) The seriousness of the violation.

**Section 250 Injunctive Relief (8 PYTC § 5-2-250)**

- (A) At the request of the enforcement authority, or at its own initiative, the Attorney General may file an action for a temporary restraining order, a preliminary injunction, a permanent injunction, a cease and desist order, or any other relief provided by law if the enforcement authority or Attorney General has reasonable cause to believe that any of the following is occurring:
  - (1) A person has violated or is in violation of any provision of this Ordinance, an order requiring compliance with this Ordinance, or any provision of a permit.
  - (2) A person has violated or is in violation of a Compliance Order.
  - (3) A person is creating an imminent and substantial endangerment to the public health or the environment.

**Section 260 Denial or Revocation of Permit or License (8 PYTC § 5-2-260)**

- (A) Revocation. Permits and licenses issued under the provisions of this Ordinance may be revoked for noncompliance with material conditions of the permit or when continued operation would violate an Ordinance or create imminent and substantial endangerment to public health or the environment.

- (B) Exclusion. Any entity or individual who is not a member of the Tribe who is found by the Tribal Court to have committed any violation of this Ordinance may have his, her or its rights to engage in commercial dealings on the Reservation suspended or terminated.

**Section 270 Coordination with Off-Reservation Authorities (8 PYTC § 5-2-270)**

Tribal staff, including the Attorney General's Office, and the Tribal Council, as appropriate, may coordinate with off-Reservation enforcement authorities, including the City of Tucson, Pima County, and the State of Arizona, to enjoin and prosecute those conducting improper waste disposal activities outside of the boundaries of the Reservation that are having an adverse affect on Reservation land and residents. Such cooperation may extend to the civil enforcement and prosecution of persons who reside off the Reservation but who illegally dispose of waste on the Reservation or otherwise violate this Ordinance.

**SUBCHAPTER J CRIMINAL ENFORCEMENT**

**Section 280 Criminal Enforcement Referral Procedure (8 PYTC § 5-2-280)**

- (A) Any violation of any provision of this Ordinance or any regulation, rule, order, permit, or license issued hereunder, is a criminal offense subjecting the violator, upon conviction, to a fine of \$5,000 or one year in jail, or both, with costs, for each violation committed.
- (B) The Attorney General or Tribal Prosecutor, at their discretion, shall prosecute those violations they deem serious and appropriate for criminal prosecution, and may consult with and, as appropriate, refer for federal prosecution any person who is alleged to have willfully or knowingly violated this Ordinance or a permit issued under this Ordinance.
- (C) If this Ordinance is knowingly violated, information concerning the violation may be forwarded to the EPA Region IX under a Memorandum of Agreement or other appropriate arrangement to be developed between the Tribe and EPA, for possible criminal prosecution.

**SUBCHAPTER K APPEALS**

**Section 290 Applicability (8 PYTC § 5-2-290)**

- (A) This section applies to all appealable agency actions. An appealable agency action is:
  - (1) The issuance or denial of a permit;
  - (2) A significant revision to a permit;
  - (3) Failure to act on a permit application in a timely manner or as prescribed by this Ordinance;
  - (4) Revocation of a permit;
  - (5) The issuance of a Compliance Order; or
  - (6) The imposition, by order, of an administrative civil penalty.

**Section 300 Judicial Review of Final Administrative Decisions (8 PYTC § 5-2-300)**

(A) Authority of the Pascua Yaqui Tribal Court

- (1) In addition to all other authority that is or may hereafter be granted, the Tribal Court may:
  - (i) With or without bond, unless required by ordinance under authority of which the administrative decision was entered, and before or after answer, stay the decision in whole or in part pending final disposition of the case, after notice to the Tribe and for substantial good cause shown.
  - (ii) Make any order that it deems proper for the amendment, completion, or filing of the record of the proceedings by the Tribe.
  - (iii) Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
  - (iv) Dismiss parties or realign parties plaintiff and defendant.
  - (v) Modify, affirm, or reverse the decision in whole or in part.
  - (vi) Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
  - (vii) In the case of affirmance or partial affirmance of an administrative decision requiring payment of money, enter judgment for the amount justified by the record and for costs, upon which execution may issue.
- (2) Technical errors in the proceedings or failure to observe technical rules of evidence shall not constitute grounds for reversal of the decision, unless the trial court determines that the error or failure affected the rights of a party and resulted in substantial injustice to that party.

**Section 310 Appellate Review (8 PYTC § 5-2-310)**

The final decision, order, judgment, or decree of the Tribal Court entered for an action to review a final administrative decision of the Tribe may be appealed to the Pascua Yaqui Tribal Court of Appeals.

**Section 320 Rules of Civil Procedure (8 PYTC § 5-2-320)**

Where applicable, all rules of civil procedure in the Tribal Court, including rules relating to appeals to the Pascua Yaqui Tribal Court of Appeals, shall apply to all proceedings.

**SUBCHAPTER L INDEMNIFICATION**

**Section 330 Indemnification (8 PYTC § 5-2-330)**

Any person who contracts with the Tribe to collect, transport, distribute, or dispose of solid waste, shall indemnify the Tribe, and their members, officers, directors, agents and employees, from any claims and liabilities of any nature whatsoever, including third party suits for personal injury, death, environmental cleanup, or property damage, which are based upon any violations of any of the provisions of this Ordinance; rules or regulations promulgated thereunder; guidance documents; environmental solid waste

standards; any orders or permit conditions; or any other Federal or Tribal environmental laws, and which claims or liabilities are not caused by the Tribe, or any of its members, officers, agents or employees.

#### **SUBCHAPTER M SEVERANCE**

##### **Section 340 Severability (8 PYTC § 5-2-340)**

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

#### **SUBCHAPTER N EFFECTIVE DATE**

##### **Section 350 Effective Date (8 PYTC § 5-2-350)**

This Ordinance shall become effective the date it is enacted by the Tribal Council.

##### **Section 360 Compliance Transition for Facilities Requiring Permits (8 PYTC § 5-2-360)**

An existing transfer station or other facility subject to regulation hereunder that is operating lawfully on the Reservation at the time this Ordinance becomes effective shall submit an application for approval of a Plan of Operation and for an Operating Permit to the Tribe within 180 days of this Ordinance becoming effective. If, after the permit application and review process is concluded, the Tribal Council denies a permit to such facility, the affected facility shall cease operations or be subject to enforcement hereunder. An existing facility subject to regulation hereunder that that is operating unlawfully on the Reservation at the time this Ordinance becomes effective shall be subject to immediate enforcement hereunder.

##### **Section 370 Contracts (8 PYTC § 5-2-370)**

Any existing contract or agreement with a person engaged in waste collection or disposal activities on the Reservation that is renewed, amended, or extended after the effective date of this Ordinance, and any new contract entered after the effective date of this Ordinance, shall subject the parties thereto to the provisions and requirements of this Ordinance. Any new contractual provision claiming to exclude the parties from compliance with this Ordinance shall be of no force or effect.”

**DISPOSITION TABLE**

<b>Former Section</b>	<b>New Section</b>
Sec. 8.1	Section 10
Sec. 8.2	Section 20
Sec. 8.3	Section 30
Sec. 8.4	Section 40
<b>NEW</b>	Section 50
<b>NEW</b>	Section 60
<b>NEW</b>	Section 70
<b>NEW</b>	Section 80
<b>NEW</b>	Section 90
<b>NEW</b>	Section 100
<b>NEW</b>	Section 110
<b>NEW</b>	Section 120
<b>NEW</b>	Section 130
<b>NEW</b>	Section 140
<b>NEW</b>	Section 150
<b>NEW</b>	Section 160
<b>NEW</b>	Section 170
<b>NEW</b>	Section 180
<b>NEW</b>	Section 190
<b>NEW</b>	Section 200
<b>NEW</b>	Section 210
<b>NEW</b>	Section 220
<b>NEW</b>	Section 230
<b>NEW</b>	Section 240
<b>NEW</b>	Section 250
<b>NEW</b>	Section 260
<b>NEW</b>	Section 270
<b>NEW</b>	Section 280
<b>NEW</b>	Section 290
<b>NEW</b>	Section 300
<b>NEW</b>	Section 310
<b>NEW</b>	Section 320
<b>NEW</b>	Section 330
<b>NEW</b>	Section 340
<b>NEW</b>	Section 350
<b>NEW</b>	Section 360
<b>NEW</b>	Section 370