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Part III. Enforcement Ordinances

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1.0 CIVIL ENFORCEMENT

1.1 Administrative Compliance Orders.

- A.** If the Director has reasonable cause to believe that any person has violated or is in violation of any provision of an Air Quality Ordinance, or any requirement of a permit issued pursuant to Part II, the Director may issue an order requiring compliance as expeditiously as practicable, but in no event later than one (1) year after the date the order was issued. The order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.
- B.** A compliance order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation, the requirement, provision, or section violated, a reasonable time for compliance, if applicable, and shall state that the alleged violator is entitled to a hearing if a hearing is requested in writing within thirty (30) days after the date of issuance of the order.
- C.** A compliance order becomes final and enforceable in the Community Court unless, within thirty (30) days after receipt of the compliance order, the alleged violator requests a hearing before an administrative law judge (“ALJ”) in accordance with Part IV (Administrative Appeals). If a hearing is requested, the compliance order does not become final until the ALJ has issued a recommended decision on the appeal to the Director and the Director has issued a final decision on the appeal.

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- D. After the compliance order becomes final, the GRIC General Counsel (“General Counsel”), at the request of the Director, may file an action in Community Court to enforce an administrative compliance order issued pursuant to this subsection. 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 Director in accordance with subsection 1.2 of this Section.
- E. The Director’s final decision is appealable to the Community Court, but the decision is not stayed during the appeal.

1.2 Civil Penalties.

- A. **Administrative Civil Penalties.** Any person who is found to be in violation of an Ordinance, a compliance order issued pursuant to subsection 1.1 of this Section, or any provision of a permit issued pursuant to Part II, shall be subject to an order imposing an administrative civil penalty of up to \$5,000 per day for each violation.
- B. **Civil Judicial Penalties.** Any person who is found to be in violation of an Ordinance, a compliance order issued pursuant to subsection 1.1 of this Section, or any provision of a permit issued pursuant to Part II, shall be subject to a civil judicial penalty of up to \$10,000 per day for each violation.
- C. **Determining the Number of Days of Violation.** Each day of a failure to perform any act or duty for which a civil penalty may be assessed pursuant to this Section constitutes a separate offense. Where the Director has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved.
- D. **Recovery of Penalties.** At the request of the Director, the General Counsel may file an action in Community Court to recover penalties provided for in this Section.
- E. **Penalty Assessment Criteria.** In determining the amount of a civil penalty under this Section, the Director or the Community Court, as appropriate, shall consider the following factors:
 - 1. The size of the business;

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2. The economic impact of the penalty on the business;
3. The violator’s full compliance history and good faith efforts to comply;
4. The duration of the violation as established by any other credible evidence (including evidence other than the applicable test method);
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.

1.3 **Injunctive Relief.** At the request of the Director, the General Counsel may file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law if the Director has reasonable cause to believe that any of the following is occurring:

- A. A person has violated or is in violation of any provision of an Ordinance, an order requiring compliance with an Ordinance, or any provision of a permit.
- B. A person has violated or is in violation of an effective compliance order.
- C. A person is creating an imminent and substantial endangerment to the public health or the environment.

1.4 **Denial or Revocation of Operating Permit.**

- A. **Permit Denial.** The Director may deny a request for a permit if the permit application demonstrates that the applicant is incapable of meeting the requirements of an Ordinance.
- B. **Revocation.** Permits issued by the Department of Environmental Quality under the provisions of an Ordinance may be revoked by the Department of Environmental Quality for noncompliance with material conditions in the permit or when continued operation would violate an Ordinance or create a consistent pattern of imminent and substantial endangerment to public health or the environment.
- C. **Appeal.** An order by the Director revoking a permit is appealable to an Administrative Law Judge (“ALJ”) and the final order of revocation from

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the Director is appealable to Community Court in accordance with Part IV (Administrative Appeals).

2.0 CRIMINAL ENFORCEMENT

2.1 Criminal Enforcement Referral Procedure.

- A. The General Counsel shall consult with and, as appropriate, refer for federal prosecution any person who is alleged to have willfully or knowingly violated an Ordinance or a permit issued under Part II.
- B. If an 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 GRIC and EPA, for possible criminal prosecution under Section 113(c) of the Clean Air Act.

~~3.0 CITIZEN SUITS~~

~~3.1 Authority to Bring Civil Action.~~

- ~~A. Except as provided in paragraph B of this subsection, any person, as defined in Section 1.0 of Part II, may commence a civil action on his own behalf against:

 - ~~1. Any person who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of:

 - ~~(a) an emission standard or limitation under an Ordinance, or~~
 - ~~(b) an order issued by the Director with respect to such emission standard or limitation.~~~~
 - ~~2. Any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under Part II or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.~~~~
- ~~B. No civil action may be commenced under this Section against the Community, DEQ, or Community officers, officials or employees acting within the scope of their duties. Tribal sovereign immunity bars civil suits against the Community or Community officers or officials acting within the scope of their duties.~~

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~~C. The DEQ may intervene as a matter of right in any action filed under this Section.~~

3.2 Notice; Stay of Action.

- ~~A. Sixty (60) days prior to commencing an action under subsection 3.1, the plaintiff shall give notice of the violation to the following persons:~~
- ~~1. the Director of DEQ;~~
 - ~~2. the Community (notice should be provided to the Governor); and~~
 - ~~3. the alleged violator of the standard, limitation or order.~~
- ~~B. During the 60-day period prior to filing a citizen suit, the right to file a suit shall be stayed if the alleged violator and DEQ reach an enforcement settlement agreement that resolves the violations that are the subject of the citizen suit and files such agreement with the Community Court. The violations that are the subject of the citizen suit may be resolved by payment of civil penalties, a compliance schedule, injunctive relief, or any combination thereof to which the parties agree.~~
- ~~C. The parties serving notice of the citizen suit shall have an opportunity to comment on the enforcement agreement, either through an open hearing or by filing written comments with the Community Court. After the comment period, the Community Court shall act to approve, modify or reject the enforcement settlement agreement. The stay of the citizen suit shall remain in effect until the Community Court issues a decision. If the Community Court rejects the enforcement settlement agreement, the stay is automatically lifted and the citizen suit may be filed in Community Court. If the Community Court approves the enforcement settlement agreement or approves it with modifications, the stay becomes permanent.~~

3.3 Jurisdiction. Where a citizen suit is allowed to go forward, the Community Court shall have jurisdiction to enforce such an emission standard or limitation, or such an order and to apply any appropriate civil penalties.

3.4 Award of Costs. The Community Court, in issuing any final order in any action brought pursuant to subsection 3.1 may award costs of litigation (including any reasonable attorneys' and expert witness fees) to any party, whenever the Court determines such award is appropriate

3.5 Non-Restriction of Other Rights. Nothing in this Section shall restrict any right which any person may have under the laws and ordinances of the Community to seek enforcement of any emission standard or limitation or to seek any other relief, excluding relief against the Community, DEQ, or Community officers, officials or employees acting within the scope of their authority.

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~~3.6 **Emissions Standard or Limitation Under the Ordinance Defined.** For purposes of this Section, the term “emission standard or limitation under an Ordinance” means:~~

- ~~A. A schedule or timetable of compliance, emission limitation, standard of performance or emission standard;~~
- ~~B. A control or prohibition respecting a motor vehicle fuel or fuel additive;~~
- ~~C. Any condition or requirement of a permit under Part II or any condition or requirement under an Ordinance; or~~
- ~~D. Any other standard, limitation, or schedule established under an Ordinance.~~