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**Part IV. Administrative Appeals**

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**1.0 GENERAL PROVISIONS**

- 1.1 Applicability.** This section applies to all appealable agency actions. An appealable agency action is:
- A. The issuance or denial of an air quality permit;
  - B. A significant revision to an air quality permit;
  - C. Failure to act on an air quality permit in a timely manner or as prescribed by the applicable permit ordinance;
  - D. Revocation of an air quality permit;
  - E. The issuance of a compliance order; or
  - F. The imposition, by order, of an administrative civil penalty.

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## 2.0 DEFINITIONS

“**Administrative Law Judge**” means an individual with experience and expertise in the law, appointed by the Governor, who sits as an administrative law judge and conducts administrative hearings for appealable agency actions.

“**Administrative Law Judge Decision**” means the findings of fact, conclusions of law, and recommended decision issued by an administrative law judge.

“**Department**” means the Gila River Department of Environmental Quality.

“**Appealable Department Action**” means an action that is subject to administrative appeal pursuant to this tribal ordinance.

“**Director**” means the Director of the Gila River Department of Environmental Quality.

“**Final Administrative Decision**” means a decision by the Gila River Department of Environmental Quality that is subject to review by the Gila River Community Court pursuant to Section 5.0.

“**Governor**” means the individual elected to serve as the Chief Executive Officer of the Gila River Indian Community.

## 3.0 ADMINISTRATIVE APPEALS PROCEDURES

### 3.1 Notice of Appealable Agency Action: Hearing.

- A. At the time an action is taken that is appealable under subsection 1.1, the Gila River Department of Environmental Quality shall serve notice of the action pursuant to subsection 3.2. The notice shall identify the ordinance or rule that is alleged to have been violated or on which the action is based and shall include a description of the party’s right to request a hearing on the matter.
- B. A party may obtain a hearing on an appealable agency action by filing a notice of appeal with the Department of Environmental Quality within thirty (30) days after receiving the notice prescribed in paragraph (A) of this subsection. The notice may be filed by a party whose legal rights, duties, privileges were determined by the appealable agency action. A notice of appeal may also be filed by a party who will be adversely affected by the issuance or denial of a permit and who exercised any right to comment on the action as provided by law or ordinance, provided that the grounds for appeal are limited to issues raised in that party’s comment. The Director of DEQ has the discretion to accept Notices that are filed late due to circumstances beyond the party’s control.

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- C. The notice of appeal shall identify the party, the party's address, the action being appealed and shall contain a concise statement of the reasons for the appeal. The Department of Environmental Quality shall notify the Governor of the appeal and the Governor shall schedule a hearing pursuant to subsection 3.4.

**3.2 Service.**

- A. Every notice or decision shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to every party to the action. Notice shall be served to the party's last address of record with the Department of Environmental Quality.
- B. Each party shall inform the Department of Environmental Quality and if applicable, the administrative law judge of any change of address within (5) days of the change.

**3.3 Request for a Hearing.**

- A. The Director of the Department of Environmental Quality shall notify the Governor's office of the appeal within five (5) business days.
- B. The Department of Environmental Quality shall provide the following information to the Governor's Office:
1. Caption of the matter, including the names of the parties.
  2. The date the party appealed the agency action.
  3. Estimated time for the hearing.
  4. Proposed Hearing dates.
  5. Any request to expedite or consolidate the matter.
  6. Any agreement of the parties to waive the applicable time limits to set the hearing.
  7. Information regarding the nature of the proceeding, including the specific allegation.

- 3.4 Assignment of Administrative Law Judge: Setting the Hearing.** Within thirty (30) days of the Governor's receipt of a request for a hearing, the Governor shall provide, in writing, to the appealing party and the Department of Environmental Quality:

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- A. The name of the administrative law judge assigned to hear the matter.
- B. The date, time, and location of the hearing.

**3.5 Scheduling of Hearing.**

- A. Except as provided in paragraph (B) of this subsection, hearings for appealable agency actions shall be held within ninety (90) days after the notice of appeal is filed.
- B. The date scheduled for the hearing may be advanced or delayed upon the agreement of the parties or on a showing of good cause.
- C. The Administrative Law Judge shall prepare and serve a notice of hearing on all parties to the appeal at least thirty (30) days before the hearing. The notice shall include:
  - 1. A statement of the time, place, and nature of the hearing.
  - 2. A statement of legal authority and jurisdiction under which the hearing is to be held.
  - 3. A reference to the particular sections of the ordinance involved.
  - 4. A short and plain statement of the matters asserted.
- D. Any party to the appeal may file a motion with the administrative law judge asserting the party's right to an expedited hearing.

**3.6 Pre-Hearing Conference.**

- A. Upon written request of any party or upon the administrative law judge's own motion, the administrative law judge may schedule a pre-hearing conference at least ten (10) days before the date set for hearing. The purpose of the pre-hearing conference is to:
  - 1. Clarify or limit procedural, legal, or factual issues.
  - 2. Consider amendments to any pleading.
  - 3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
  - 4. Obtain stipulations or rulings regarding testimony, exhibits, fact or law.

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- 5. Schedule deadlines, hearing dates, and locations if not previously set.
- 6. Allow the parties the opportunity to discuss settlement.
- B. The pre-hearing conference must be scheduled at least ten (10) days before the hearing takes place. The administrative law judge may issue a pre-hearing order outlining the issues to be discussed. This order shall control the subsequent course of the action.
- C. The administrative law judge shall record any agreements reached during a pre-hearing conference by electronic or mechanical means or memorialize them in an order reciting the agreement or action taken.

**3.7 Hearing.**

- A. The parties to an appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.
- B. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and enforced in a manner provided by the Gila River Community Code of Law and Order for the service and enforcement of subpoenas in civil matters.
- C. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by danger of unfair prejudice, by confusion of the issues or considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
- D. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the Department of Environmental Quality's expense. Any party requesting a transcript shall pay the costs of the transcript.
- E. Informal disposition may be made by stipulation, agreed settlement, consent order, or default.

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- F. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision if the evidence supporting the decision is substantial, reliable, and probative.

#### 4.0 FINAL ADMINISTRATIVE DECISION: REVIEW

##### 4.1 Recommended Decision.

- A. The administrative law judge shall issue a written recommended decision within twenty (20) days after the hearing is concluded. The recommended decision shall include findings of fact and conclusions of law, separately stated, and a concise explanation of the reasons supporting the recommended decision.
- B. The administrative law judge shall serve a copy of the recommended decision on the appealing party and the Director of the Department of Environmental Quality and the record of the hearing.
- C. Within thirty (30) days after the date the administrative law judge sends a copy of the recommended decision to the Director, the Director may review the decision and accept, reject or modify it in accordance with the following requirements:
  1. If the Director declines to review the administrative law judge's decision or accepts the decision, the Director shall serve the decision on all parties.
  2. Prior to rejecting or modifying the decision, the Director shall consult with and obtain the written consent of the Governor or his or her designee. The Director shall thereafter serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth reasons for the rejection or modification.

##### 4.2 Final Decision.

- A. The Director's final decision shall state separately the findings of fact and conclusions of law. If no appeal is taken within thirty-five (35) days, the decision shall become final.
- B. A party may appeal a final administrative decision pursuant to Section 5.0 of this Part.

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## 5.0 JUDICIAL REVIEW OF FINAL ADMINISTRATIVE DECISIONS

### 5.1 Scope.

- A. This Section applies to and governs every action to review judicially a final administrative decision of the Director.
- B. Unless review is sought of an administrative decision within the time and in the manner provided in subsection 5.2, the parties to the proceeding shall be barred from obtaining judicial review of such decision.

### 5.2 Commencement of Action.

An action to review a final administrative decision shall be commenced by the affected party by filing a complaint within thirty five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The decision shall be deemed to have been served when personally delivered or mailed by registered mail to the party affected at the last recorded residence or place of business.

### 5.3 Jurisdiction.

Jurisdiction to review final administrative decisions is vested in the Gila River Indian Community Court.

### 5.4 Service of Process.

In an action to review a final administrative decision, a copy of the summons and complaint shall be served as in civil actions and as provided by the Gila River Indian Community Code of Law and Order, upon the Director of the Office of the Department of Environmental Quality.

### 5.5 Appearance of Defendants.

Within twenty (20) days after service of the summons and complaint, the Director shall answer the complaint.

### 5.6 Pleadings and Record on Review.

- A. The complaint shall contain a statement of the findings and decision or part thereof for which review is sought, and shall clearly specify the grounds upon which review is sought. It shall also state what portion of the record the party asserts is relevant to the review it is seeking and which shall be filed by the Director as part of the record on review.

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- B. Except as otherwise provided, the Director shall file an answer which shall contain the original or a certified copy of the portion of record designated in the complaint. The answer may also contain other portions of the record as the Director deems relevant. By order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.
- C. If, as a result of judicial review, the cause is remanded to the Department of Environmental Quality and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all parties, shall constitute the record on review.

**5.7 Scope of Review.**

- A. An action to review a final administrative decision shall be heard and determined within a reasonable time. The hearing and determination shall be extended to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to a finding, order, or decision of the Department of Environmental Quality shall be heard by the court, except in the event of a trial de novo or in cases where in the discretion of the court, justice demands the admission of such evidence.
- B. The trial shall be de novo if a trial de novo is demanded in the complaint or answer and if no hearing was held by an administrative law judge or the proceedings before the administrative law judge were not stenographically reported or mechanically recorded so that a transcript might be made.
- C. A party who has demanded a trial de novo in the complaint or answer pursuant to subsection 5.7 (B) shall file, prior to the time for filing the opening appellate brief, a motion explaining the need for a trial de novo with citation to legal authority supporting the demand. Any party opposing the motion may file a response thereto.
- D. The Gila River Indian Community Court may not reverse the Director's finding of fact unless it is clearly erroneous and may not reverse the Director's final administrative decision unless it has no substantial evidentiary basis in the record or is erroneous as a matter of law.

**5.8 Authority of the Gila River Indian Community Court.**

- A. The Gila River Indian Community Court may:
  - 1. With or without bond, unless required by ordinance under authority of which the administrative decision was entered, and

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before or after answer, stay the decision in whole or in part pending final disposition of the case, after notice to the Department of Environmental Quality and for substantial good cause shown.

2. Make any order that it deems proper for the amendment, completion, or filing of the record of the proceedings by the Department of Environmental Quality.
  3. Allow substitution of parties by reason of marriage, death, bankruptcy, assignment or other cause.
  4. Dismiss parties or realign parties plaintiff and defendant.
  5. Modify, affirm, or reverse the decision in whole or in part.
  6. Specify questions or matters requiring further hearing or proceedings and give other proper instructions.
  7. When a hearing has been held by the administrative law judge, remand for the purpose of taking additional evidence when from the state of the record or otherwise it appears that such action is just.
  8. 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.
- B. Technical errors in the proceedings before the administrative law judge 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 injustice to that party.
- C. On motion of a party before rendition of judgment, the trial court shall make findings of fact and state conclusions of law upon which its judgment is based.

#### **5.9 Appellate Review.**

The final decision, order, judgment, or decree of the Gila River Indian Community Court entered for an action to review a final administrative decision of the Director may be appealed to the Gila River Indian Community Court of Appeals.

#### **5.10 Rules of Civil Procedure.**

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Where applicable, all rules of civil procedure in the Gila River Indian Community Court, including rules relating to appeals to the Gila River Indian Community Court of Appeals, shall apply to all proceedings.