

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**RINCON HAZARDOUS MATERIAL CONTROL
ORDINANCE
RINCON TRIBAL CODE § 8.600**

Adopted on January 30, 2013

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§ 8.600 PURPOSE AND DECLARATION OF POLICY

(a) The beneficial stewardship of the land, air, and waters of the Rincon Reservation is a solemn obligation of the present generation for the benefit of future generations.

(b) The Reservation Population residing on or doing business within the exterior boundaries of the Rincon Reservation benefits from a healthful environment and each Person has a responsibility to preserve and protect the quality of the Reservation Environment.

(c) The Tribal Council finds that the release of Hazardous Material into the Reservation Environment poses a direct threat to life, health, property, and natural resources of the Rincon Band, its people, and fee and trust lands. Pollution sources are currently known to, or suspected to, contaminate Reservation Environment, Rincon Reservation land, surface water and ground waters for which existing federal law may not apply.

(d) The purpose of this Ordinance is to provide remedial law for the cleanup of Hazardous Material sites and to prevent the creation of future hazards due to improper disposal of Hazardous Material on or into the Reservation Environment.

§ 8.601 APPLICABILITY TO NON-INDIAN ACTIVITIES ON NON-INDIAN OWNED FEE LANDS WITHIN THE RESERVATION

Applicability of tribal environmental ordinances to non-Indian activities occurring on non-Indian owned fee lands located within the exterior boundaries of the Rincon Reservation.

(a) In *Montana v. United States*, the Supreme Court held that tribes generally do not have jurisdiction over non-Indian activities occurring on reservation fee lands, subject to two important exceptions:

(1) A tribe may regulate the activities of non-members who enter consensual relationships with the Rincon Band or its members, through commercial dealings, contracts, leases, or other arrangements; and

(2) A tribe may also retain inherent power to exercise civil authority

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over conduct that threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the Rincon Band.

(b) Prior to applying a Rincon land use or environmental ordinance to non-Indian activities occurring on fee lands located within the Rincon Reservation, the Rincon Environmental Department must first determine that the non-Indian activities seeking to be regulated fall within one of the exceptions set forth in Section 8.601(a).

(1) The Rincon Environmental Department shall include a written determination under Section 8.601(a) within any Notice of Violation in which non-Indian activities occurring on fee lands located within the Rincon Reservation are the basis for the violation.

(2) The recipient of any such Notice of Violation shall be entitled to a preliminary jurisdictional hearing before the Tribal Court.

(3) If the recipient objects to tribal jurisdiction and requests a jurisdictional hearing, the burden shall be on the Rincon Band to establish tribal jurisdiction pursuant to federal common law.

§ 8.602 **DEFINITIONS**

For the purposes of this Ordinance, the following definitions shall apply:

(a) "**Attorney General**" or "**Tribal Attorney**" means the attorney authorized by the Tribal Council to carry out the duties as described in the Ordinance.

(b) "**Agreed Order**" means an order issued by the Rincon Environmental Department under this Ordinance with which the Potentially Liable Person receiving the order agrees to comply.

(c) "**Facility**" means:

(1) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

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(2) Any site or area where a Hazardous Material, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(d) "**Federal Cleanup Law**" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended.

(e) "**Foreclosure and its equivalents**" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the Holder acquires title to or possession of a Facility securing a loan or other obligation.

(f) "**Hazardous Material**" means:

(1) Any "dangerous waste", defined as any discarded, useless, unwanted, or abandoned substances disposed of in such quantity or concentration as to pose a present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(A) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(B) Are corrosive, explosive, flammable, or may generate pressure throughout decomposition or other means.

(2) Any "hazardous waste," defined as any waste which:

(A) Will persist in a hazardous form for three (3) years or more at a disposal site; and

(B) While in its persistent form:

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(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic makeup of people or wildlife; or

(ii) Is toxic to people or wildlife; or

(iii) Adversely affects living organisms in soil, sediment, and water, or air; or

(C) If disposed of at a disposal site in such quantities or concentrations as might present a hazard to people or the environment.

(3) Any substance included as a “listed waste” under 40 CFR §261.30 through 261.33.

(4) Any substance classified as a “characteristic waste” defined in the 40 CFR §261.20 through §261.24 as exhibiting one of four hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(5) Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the hazardous characteristics: Ignitable; Corrosive; Reactive (or explosive); or, Toxic.

(6) Any substance that is a hazardous substance pursuant to 42 U.S.C. § 9601(14).

(7) Petroleum or petroleum products.

(A) The term Hazardous Material does not include crude oil or any fraction thereof or petroleum when contained in an underground or aboveground storage tank from which there is not a release, if the tank is in compliance with all applicable federal and Tribal Laws.

(8) Any substance or category of substances, including solid waste decomposition products, determined by the Rincon Environmental

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Department to present a threat to human health or the environment if released into the environment.

(g) "Hazardous Material Account" means an account of money set aside for uses described in Section 8.607.

(h) "Health Hazard" is a classification of a chemical for which there is statistically significant evidence that acute or chronic health effects are capable of occurring in exposed Persons. The term "Health Hazard" includes chemicals that are toxic or highly toxic.

(i) "Holder" means a Person who holds indicia of ownership primarily to protect a security interest. A Holder includes the initial Holder such as the loan originator, any subsequent Holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other Person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other Person who acts on behalf or for the benefit of a Holder. A Holder can be a public or privately owned financial institution, receiver, conservator; loan guarantor, or other similar Persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(j) "Independent remedial actions" means remedial actions conducted without the Rincon Environmental Department oversight or approval, and not under an order, Agreed Order, or consent decree.

(k) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a Facility securing a loan or other obligation, including any legal or equitable title to a Facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased Facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the Facility that are held primarily to protect a security interest.

(l) "Owner or Operator" means:

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(1) Any Person with any ownership interest in the Facility or who exercises any control over the Facility; or

(2) In the case of an abandoned Facility, any Person who had owned, or operated, or exercised control over the Facility any time before its abandonment;

(3) The term does not include:

(A) The Rincon Band or any Tribal Instrumentality thereof which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the Rincon Band involuntarily acquires title. This exclusion does not apply to an instrumentality of the Rincon Band which is subject to a waiver of sovereign immunity, which has caused or contributed to the release or threatened release of a Hazardous Material from the Facility;

(B) Any Person who has any ownership interest in, operates, or exercises control over real property where a Hazardous Material has come to be located solely as a result of migration of the Hazardous Material to the real property through the groundwater from a source off the property, if:

(i) The Person can demonstrate that the Hazardous Material has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the Hazardous Material that has migrated onto the property;

(ii) The Person has not caused or contributed to the release of the Hazardous Material;

(iii) The Person does not engage in activities that damage or interfere with the operation of remedial actions installed on the Person's property or engage in activities that result in exposure of humans or the environment to

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the contaminated ground water that has migrated onto the property;

(iv) If requested, the Person allows the Rincon Environmental Department or Potentially Liable Persons who are subject to an order, Agreed Order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the Rincon Environmental Department. The Person may attempt to negotiate an access agreement before allowing access; and

(v) Legal withdrawal of groundwater does not disqualify a Person from this exemption.

(C) Any Person that, without participating in the management of a Facility, holds indicia of ownership primarily to protect the security interest of the Person in the Facility.

(m) "Person" means any Rincon Band member, non-member Indian or non-Indian individual, trust, firm, association, partnership, consortium, joint venture, commercial entity, political subdivision, government agency, municipality, industry, public or private corporation, Tribal Instrumentality subject to a waiver of sovereign immunity, or any other entity whatsoever.

(n) "Physical Hazard" is a chemical for which there is evidence that it is a combustible liquid, cryogenic fluid, explosive, flammable (solid, liquid or gas), organic peroxide (solid or liquid), oxidizer (solid or liquid), oxidizing gas, pyrophoric (solid, liquid or gas), unstable (reactive) material (solid, liquid or gas) or water-reactive material (solid or liquid).

(o) "Potentially Liable Person" means any Person whom the Rincon Environmental Department finds, based on credible evidence, to be liable under Section 8.604(a). The Rincon Environmental Department shall give notice to any such Person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

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(p) "**Reservation Environment**" means the environment within the exterior boundaries of the Rincon Reservation and other lands held in trust status by the U.S. federal government for the Rincon Band or its members.

(q) "**Reservation Population**" means Persons residing within or doing business within the Rincon Reservation.

(r) "**Release**" means any intentional or unintentional entry of any Hazardous Material into the environment, including but not limited to the abandonment or disposal of containers of Hazardous Material.

(s) "**Remedy**" or "**Remedial Action**" means any action or expenditure consistent with the purpose of this Ordinance to identify, eliminate, clean up, or minimize any threat of potential threat posed by Hazardous Material to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a Hazardous Material and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(t) "**Rincon Band**" means the Rincon Band of Luiseño Indians, a sovereign Indian Band which is recognized as such by the U.S. federal government. Reference to "Tribe" or "Band" in any existing or future environmental ordinance shall mean the "Rincon Band".

(u) "**Rincon Environmental Department**" or "**RED**", is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances and management of the Rincon Band's natural resources unless otherwise specified.

(v) "**Sediment**" means unconsolidated material eroded from parent rock, including soil and/or any man-made unconsolidated solid material of a particulate nature, which exists below the ordinary high water mark of any water body or wetland.

(w) "**Tribal Council**" is the five-member committee established under Section 3 (a) of the Rincon Band's Articles of Association. "Tribal Council" shall be synonymous with "Business Committee" or "Rincon Business Committee" as used in any existing or future tribal ordinance.

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(x) "**Tribal Court**" means the Intertribal Court of Southern California or other tribal forum designated by the Business Committee to hear and decide violations of Tribal Laws.

(y) "**Tribal Instrumentality**" means a unit of Tribal government or a Tribal organization that is ultimately responsible to the Tribal Council.

(z) "**Tribal Laws**" means laws, ordinances, codes, policies and procedures enacted by the Rincon Business Committee.

§ 8.603 **RINCON ENVIRONMENTAL DEPARTMENT (RED)**

(a) **Powers and Duties.** The Rincon Environmental Department may exercise the following powers in addition to any other powers granted by Tribal Law or federal law:

(1) Investigate, provide for investigating, or require Potentially Liable Persons to investigate any releases or threatened releases of Hazardous Material, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a Hazardous Material may exist, the RED's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The RED shall give reasonable notice before entering property unless an emergency prevents such notice. The RED may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the RED deems necessary;

(2) Conduct, provide for conducting, or require Potentially Liable Persons to conduct remedial actions including investigations under Section 8.603(a)(1) to Remedy releases or threatened releases of Hazardous Material. In carrying out such powers, the RED's authorized employees, agents, or contractors may enter upon property. The RED shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the RED shall give preference to permanent solutions to the maximum extent practicable and shall provide for or

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require adequate monitoring to ensure the effectiveness of the remedial action;

(3) Retain contractors and consultants to assist the RED in carrying out investigations and remedial actions;

(4) Carry out all Tribal programs authorized under the Federal Cleanup Law, the Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq., as amended, and other federal laws of Tribal Laws;

(5) Classify substances as Hazardous Material for purposes of Section 8.602(f);

(6) Issue Notices of Violation, and enter into consent decrees or Agreed Orders that include, or that may be conditioned upon, deed restrictions or other appropriate institutional controls as may be necessary to protect human health and the environment from a release or threatened release of a Hazardous Material from a Facility;

(7) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(8) Provide informal advice and assistance to Persons regarding the administrative and technical requirements of this Ordinance. This may include site-specific advice to Persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the RED. As a part of providing this advice and assistance for independent remedial actions, the RED may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this Ordinance or whether the RED believes further remedial action is necessary at the Facility. The RED may collect, from Persons requesting advice and assistance, the costs incurred by the RED in providing such advice and assistance; however, the RED shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation; and

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(9) Take any other actions necessary to carry out the provisions of this Ordinance, including proposing that the Tribal Council amend this Ordinance.

(b) The RED shall to the best of its ability implement all provisions of this Ordinance, including the cleanup standards further described in Section 8.608 and to the maximum extent practicable, institute investigative and remedial actions where appropriate; and the RED shall:

(1) Require the reporting by an Owner or Operator of releases of Hazardous Material to the environment that may be a threat to human health or the environment. This information must be reported verbally as soon as possible with written follow up notification no later than one (1) work day following the discovery of the release. A written report must be submitted to the RED as soon as practicable, and not later than sixty (60) days after discovery of the release. Consistent with the purposes of this Ordinance, the RED may provide for exemptions from reporting requirements. Reporting requirements under this Ordinance shall not modify any requirements provided for under other laws.

(2) Establish reasonable deadlines for initiating an investigation of Hazardous Material after the RED receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and

(3) Enforce clean-up standards set forth in Section 8.608.

(c) The RED may, as available resources permit, establish a program to identify potential Hazardous Material sites and to encourage Persons to provide information about Hazardous Material sites.

(d) The RED may require Facility Owners and Operators that treat, store, and/or dispose of Hazardous Material to demonstrate, to the satisfaction of the RED, that sufficient safeguards and measures are present to minimize an unauthorized release from becoming a threat to human health or the environment.

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§ 8.604 **RELEASE OF HAZARDOUS MATERIAL**

(a) Liability. Except as provided in Section 8.603(c), the following Persons are liable with respect to a release of a Hazardous Material at a Facility:

- (1)** The Owner or Operator of the Facility;
- (2)** Any Person who owned or operated the Facility at the time of disposal or release of the Hazardous Material;
- (3)** Any Person who by contract, agreement, or otherwise arranged for Hazardous Material to be present at the Facility, whether for disposal, treatment, or otherwise;
- (4)** Any Person who by contract, agreement, or otherwise arranged with a transporter for transport for disposal or treatment of the Hazardous Material at the Facility, or otherwise generated Hazardous Material disposed of or treated at the Facility;
- (5)** Any Person:
 - (A)** Who accepts or accepted any Hazardous Material for transport to a disposal, treatment, or other Facility selected by such Person from which there is a release or a threatened release for which remedial action is required, unless such Facility, at the time of disposal or treatment, could legally receive such substance; or
 - (B)** Who accepts a Hazardous Material for transport to such a Facility and has reasonable grounds to believe that such a Facility is not operated in accordance with Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., as amended, and programs appropriately delegated under RCRA; and
- (6)** Any Person who both sells a Hazardous Material and is responsible for written instructions for its use if:
 - (A)** The substance is used according to the instructions; and

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(B) The use constitutes a release for which remedial action is required at the Facility.

(7) Each Person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of Hazardous Material. The RED is empowered to recover all costs and damages from Persons liable therefore.

(b) Exceptions. The following Persons are not liable under this section:

(1) Any Person who can establish that the release or threatened release of a Hazardous Material for which the Person would be otherwise responsible was caused solely by:

(A) An act of God;

(B) An act of war; or

(C) An act or omission of a third party (including but not limited to a trespasser) other than:

(i) An employee or agent of the Person asserting the defense, or

(ii) Any Person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Person asserting this defense to liability.

(2) This defense only applies where the Person asserting the defense has exercised the utmost care with respect to the Hazardous Material, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(3) Any Person who is an Owner, past Owner, or purchaser of a Facility and who can establish by a preponderance of the evidence that at the time the Facility was acquired by the Person, the Person had no knowledge or reason to know that any Hazardous Material, the release

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or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the Facility. This Section 8.604(b)(3) is limited as follows:

(A) To establish that a Person had no reason to know, the Person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this Section 8.604(b)(3) shall take into account any specialized knowledge or experience on the part of the Person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(B) The defense contained in this Section 8.604(b)(3) is not available to any Person who had actual knowledge of the release or threatened release of a Hazardous Material when the Person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(C) The defense contained in this Section 8.604(b)(3) is not available to any Person who, by any act or omission, caused or contributed to the release or threatened release of a Hazardous Material at the Facility;

(4) Any natural Person who uses a Hazardous Material lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure that does not result in an unauthorized release when that Person is:

(A) A resident of the dwelling; or

(B) A Person who, without compensation, assists the resident in the use of the substance.

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(5) Any Person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable Tribal Law and federal laws and regulations.

(6) No Tribal, federal, state or local government shall be liable under this Ordinance for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a Hazardous Material generated by or from a Facility owned by another person. This exception shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the federal, state or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

§ 8.605 ENFORCEMENT: REQUEST FOR HEARING

(a) Notice of Violation. With respect to any release, or threatened release, for which the RED does not conduct or contract for conducting remedial action and for which the RED believes remedial action is in the public interest, the RED shall issue a “Notice of Violation” pursuant to the Rincon Environmental Enforcement Ordinance, RTC § 8.300. Any Potentially Liable Person who refuses, without sufficient cause, to comply with an order or Agreed Order of the RED is liable in an action brought by the RED for:

(1) Up to three times the amount of any costs incurred by the RED as a result of the party's refusal to comply; and

(2) A civil penalty of up to five thousand (\$5,000) dollars for each day the party refuses to comply. The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after the date this Ordinance is enacted and adopted by the Tribal Council.

(b) Recovery of Costs. The RED shall seek, by filing an action if necessary, to recover the amounts spent by the RED for investigative and remedial actions and orders, including amounts spent prior to the date this Ordinance is enacted and adopted by the Tribal Council.

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(c) Additional Relief. The RED may request that the Office of the Attorney General bring an action to secure such additional relief as is necessary to protect human health and the environment under this Ordinance.

(d) Civil Actions. Civil actions under this section shall be brought in Tribal Court.

(e) Request for Hearing. A Person served with a Notice of Violation may contest the RED's findings by filing a "Request for Hearing" with the Tribal Court pursuant to the Rincon Environmental Enforcement Ordinance, RTC § 8.300. The Request for Hearing must be filed within five (5) working days from receipt of the Notice of Violation.

§ 8.606 JUDICIAL REVIEW

The RED's investigative and remedial decisions under Sections 8.603 and its decisions regarding liable Persons under Sections 8.604(a) and Section 8.602(m) shall be reviewable exclusively in Tribal Court and only at the following times:

- (a)** Pursuant to a Request for Hearing;
- (b)** In a cost recovery suit under Section 8.605(b);
- (c)** In a suit by the RED under Section 8.605(c);
- (d)** To enforce an order, a settlement agreement, or an Agreed Order;
- (e)** To seek a civil penalty under this Ordinance; and
- (f)** In a suit by the RED to compel investigative or remedial action.

§ 8.607 DEPOSITS TO HAZARDOUS MATERIAL ACCOUNT

(a) There shall be established a Hazardous Material Account to be administered by the Rincon Band.

(b) The following moneys shall be deposited into the Hazardous Material Account:

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- (1) The costs of remedial actions recovered under this Ordinance;
- (2) Penalties collected or recovered under this Ordinance; and
- (3) Any other money appropriated or transferred to the account by the RED. Moneys in the account may be used only to carry out the purposes of this Ordinance including but not limited to the following activities:
 - (A) The Hazardous Material cleanup program required under this Ordinance;
 - (B) Matching funds required under any Tribal Law or federal law;
 - (C) Tribal programs for the safe reduction, recycling, or disposal of Hazardous Material from households, small businesses, and agriculture;
 - (D) Hazardous Material emergency response training; and
 - (E) Water and environment health protection and monitoring programs;

(c) Moneys in the Hazardous Material Account may be spent only after approval of a budget by the Tribal Council. All earnings from investment of balances in the account shall be credited to the account.

§ 8.608 SCREENING LEVELS, RISK ASSESSMENTS, AND STANDARDS

(a) Contaminated Soil, Soil Vapor, and Groundwater: Environmental Screening Levels and Risk Assessments. On January 5, 1012 the Tribal Council enacted Resolution Number 2012-02, adopting the technical document “Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater (Interim Final – November 2007, Revised May 2008)” for use by the Rincon Band when evaluating potential contamination and assessing the need for additional investigation and remediation. The RED shall employ the screening levels set forth in the technical document when assessing commonly detected contaminants in soil, soil vapor, or groundwater, to determine the level of risk, and the need for additional site investigation

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and/or remediation. The RED shall also employ the tiered risk assessment methodology set forth in the technical document, unless site-specific circumstances warrant otherwise.

(b) Surface Water and Sediment Contamination: Environmental Screening Levels; Risk Assessments. [reserved].

(c) Air Quality Standards. [reserved].

(d) The RED may consult with state and federal agencies, institutes of higher learning, and other entities with expertise in toxic cleanup and human or environmental toxicology in order to determine additional or alternative background, screening and clean up levels which are protective of human health and the environment.

§ 8.609 NO WAIVER OF SOVEREIGN IMMUNITY

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in the Ordinance shall be deemed or construed to be a waiver of the Rincon Band's sovereign immunity from unconsented suit.

§ 8.610 CAPTIONS

As used in this Ordinance captions constitute no part of the law.

§ 8.611 CONSTRUCTION

The provisions of this Ordinance are to be liberally construed to effectuate the policies and purposes of this Ordinance. In the event of conflict between the provisions of this Ordinance and any other act, the provisions of this Ordinance shall govern.

§ 8.612 EFFECTIVE DATE

The effective date of this Ordinance shall be the date this Ordinance is enacted and adopted by the Tribal Council. This Ordinance shall apply retroactively.

§ 8.613 SEVERABILITY

If any provision of this Ordinance or the application thereof to any Person or circumstance shall be held unconstitutional or invalid by the Tribal Council, only the

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invalid provision shall be severed and the remaining provision and language of this Ordinance shall remain in full force and effect.