

# Tribal Regulation of Genetically Engineered Organisms

## *Model Ordinance*



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National  
Congress of  
American  
Indians



[Tribal Letterhead]

\*\*\* Tribal Ordinance No. \_\_\_\_\_

**\*\*\* TRIBE GENETICALLY ENGINEERED ORGANISM ORDINANCE**

*Pursuant to its authority under Article \*, Section \* of the \*\*\* Constitution, the \*\*\* Tribal Council hereby enacts the following Ordinance designating \*\*\* Tribal territory as zone free from genetically engineered seeds, plants, fish, and animals:*

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## GENERAL PROVISIONS

### SECTION 1001. Title

This ordinance shall be referred to as the \*\*\* Tribe Genetically Engineered Organism Ordinance or \*\*\* GEO Ordinance.

### SECTION 1002. Definitions

- (a) *DNA* means “deoxyribonucleic acid,” which is the genetic material that is present in every cell of an organism and is the “blueprint” for the organism’s development.
- (b) *Genetic contamination* means the dispersal or spread of altered genetic information from genetically engineered organisms into the genomes of organisms in which such genes are not present in nature, such as by cross-pollination.
- (c) *Genetically engineered, genetically modified or transgenic* means modification of living plants, animals, and other organisms by genetic engineering. Examples of genetic engineering and modification include, but are not limited to: altering or amending DNA using recombinant DNA technology such as gene deletion, gene doubling, introducing a foreign gene, or changing the position of genes, and includes cell fusion (including protoplast fusion), microencapsulation, macroencapsulation, gene splicing, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic species and in a way that does not occur by natural multiplication or natural recombination. “In vitro nucleic acid techniques” include but are not limited to recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organism such as microinjection, macro-injection, chemoporation, electroporation, microencapsulation and liposome fusion, and any other technology or technique that results in an organism that contains genes from more than one species, or genes that are not naturally occurring.
- (d) *Genetically modified organism or GMO* means any living organism that possesses a novel combination of genetic material produced through the use of modern biotechnology genetic engineering techniques, separate from naturally occurring processes. For purposes of this Ordinance, genetically engineered or modified organisms do not include organisms created by traditional selective breeding, burning practices, fermenting, conjugation, normal in vitro fertilization or hybridization, or microorganisms created by moving genes or gene segments between unrelated bacteria.
- (e) *Natural seeds or natural organisms* means seeds or organisms that do not possess a novel combination of genetic material obtained through the use of modern biotechnology and have not been genetically modified or engineered. Natural seeds or organisms include those seeds or organisms created by selective breeding or hybridization methods.
- (f) *Organism* means any living thing.

### **SECTION 1003. Authority**

This Ordinance prohibiting certain genetically engineered organisms within \*\*\* Ancestral Territory and homelands, is established by the \*\*\* Tribal Council under the authority delegated to it in the \*\*\* Constitution.

### **SECTION 1004. Jurisdiction**

This Ordinance shall apply to all persons and entities throughout and within the \*\*\* Ancestral Territory and homelands over which it has jurisdiction, including over all lands, waters, riverbeds, submerged lands, properties, air space, minerals, fish forests, wildlife, and other resources, and any interest therein now or in the future. This Ordinance shall also apply to any conduct outside of \*\*\* jurisdiction that causes material genetic trespass or contamination by genetically engineered organisms within \*\*\* Ancestral Territory and homelands.

### **SECTION 1005. Findings**

The \*\*\* Tribal Council finds that:

- (a) The \*\*\* People set forth the laws by which the \*\*\* People are instructed to interact and care for our natural world, including the plants and animals we use for our food, medicine, and ceremonies;
- (b) Resisting and undoing the many negative impacts of invasion and colonization for the \*\*\* Tribe means refusing to abandon our traditions and cultural heritage, our ancestral homelands, and our responsibilities to protect, restore and enhance their resources. These include our lands, waters, traditional learning and teaching systems, and the health and well-being of our families and villages;
- (c) Honoring these sacred elements and our relations - the plants, animals, aquatic species, sun, moon and stars - are key to the restoration of our Tribal Sovereignty with regard to our food, medicinal and fiber resources, and for our spiritual, cultural, physical, social and environmental health, identity, and survival;
- (d) The \*\*\* Tribe has managed and relied upon the abundance of their lands and waters since time immemorial, and have also managed and utilized plants, animal and aquatic species resources to provide for needed medicines, ceremonial regalia, tools and baskets for its People;
- (e) The \*\*\* Tribe adopted a Constitution in order to:
  - (1) Preserve forever the survival of our Tribe and protect it from forces which may threaten its existence;
  - (2) Uphold and protect our Tribal Sovereignty which has existed from time immemorial and which remains undiminished;
  - (3) Provide for the health, education, economy, and social wellbeing of our members and future members; and
  - (4) Manage, develop, protect and regulate the use of Tribal land, wildlife, fish, plants, air, water, minerals, and all other natural and cultural resources within Tribal jurisdiction.

- (f) The \*\*\* Tribe has a vital cultural, legal, subsistence, and economic interest in the viability of and survival of its traditional food, medicinal, and natural resources and all other life-giving food and water resources in their traditional forms, natural diversity, and original integrity;
- (g) Protecting our seeds, plants, aquatic species, animals and other life-giving foods from current threats such as climate change; mining and extractive industries; genetic engineering and modification; pesticides, fungicides, rodenticides and algacides, and other toxic contaminants is essential for our survival, and is at the core of our sacred responsibilities as \*\*\* People;
- (h) The \*\*\* Tribe retains its inherent right to nourish its families and communities with plants from natural traditional seeds and to sustainably harvest and manage for plants, salmon and other fish, animals, and other life-giving foods and medicines as we have successfully done since time immemorial; and
- (i) Given the rapid federal governmental approval and pending approval of a wide variety of GMO seeds, plants, animals, and aquatic species irrespective of the Tribe's wishes to implement other environmentally sound and culturally appropriate management methods, the \*\*\* Tribe enacts this Ordinance as a preventative measure to protect its environmental and human resources.

**SECTION 1006. Purpose**

The purpose of this Ordinance is to:

- (a) Maintain and protect Tribal Sovereignty, free from outside corporate interests and unnecessary and overreaching preemption by any outside governments;
- (b) Enhance the Tribe's regulatory control over its agriculture, environment, Tribal health, welfare, and economy as they pertain to potential threats from environmental contamination;
- (c) Prohibit any person, corporation, or entity from propagating, raising, growing, spawning, incubating, or releasing genetically modified organisms within \*\*\* Ancestral Territory and homelands;
- (d) Protect \*\*\* Ancestral Territory and homelands from and educate its communities about the threats of genetically engineered organisms to cultural heritage, Tribal Sovereignty, and the health and well-being of humans, plants, animals, aquatic species, and environment;
- (e) Pursue measures to label and/or prohibit the sale and provision of GMO foods within the \*\*\* Ancestral Territory and homelands;
- (f) Declare the \*\*\* Ancestral Territory and homelands a genetically engineered contaminant-free zone. This will preserve a healthy and safe place for our traditional seeds, plants, animals, and fish, as well as for our children and future generations to thrive within the boundaries of our territory in health, strength, and harmony; and
- (g) Enable the \*\*\* Tribe to enforce the genetically engineered organism prohibitions and recover the costs of such enforcement.

**SECTION 1007. Sovereign Immunity Preserved**

Except for the judicial review authorized here, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

**SECTION 1008. Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Ordinance are severable.

**SECTION 1009. Effective Date**

This Ordinance shall take effect immediately upon adoption by the \*\*\* Tribal Council.

**SECTION 1010. Repeal of Conflicting Ordinance Provisions**

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other previously enacted ordinance, this Ordinance's provisions shall control.

**CHAPTER 1. PROHIBITED ACTIVITIES**

**SECTION 1101. Prohibited Activities**

It shall be unlawful for any person, corporation or other entity to:

- (a) Propagate, cultivate, raise, grow, spawn, incubate, or release genetically engineered or genetically modified organisms within the territory and jurisdiction of the Tribe, or to knowingly or negligently allow such activities to occur within such territory and jurisdiction, except as provided in Section 1102 herein.
- (b) Intentionally or negligently cause or allow any genetically engineered or genetically modified organisms or other contaminants from within or outside the jurisdiction of the Tribe to substantially enter, drift, or be dispersed into and within the territory and jurisdiction of the Tribe, in such a way as to risk genetic contamination of natural organisms within the jurisdiction of the Tribe. The Tribe may enforce such violations to the extent possible pursuant to applicable laws.

**SECTION 1102. Exceptions to Prohibited Activities**

- (a) State or federally licensed medical research institutions, medical laboratories, or medical manufacturing facilities engaged in licensed medical production, or medical research involving genetically engineered or genetically modified organisms are exempt from this Ordinance provided that prior written permission is obtained from the Tribe and that

such activities are conducted under secure, enclosed, indoor laboratory conditions with the utmost precautions to prevent release to the outside environment, any part of the genetically engineered organisms, especially but not limited to pollen.

- (b) Educational or scientific institutions working with genetically engineered organisms are exempt from this Ordinance, provided that prior written permission is obtained by the Tribe and that such activities are conducted under secure, enclosed, indoor laboratory conditions with the utmost precautions to prevent release to the outside environment, any part of the genetically engineered organisms, especially but not limited to pollen.
- (c) Any institution listed in (a) or (b) above that intentionally or negligently allows release of any part of the genetically engineered or genetically modified organisms into the outside environment is in violation of this Ordinance and subject to enforcement as set forth herein.

## **CHAPTER 2. IMPLEMENTATION AND ENFORCEMENT**

### **SECTION 1201. Enforcement Entities**

The \*\*\* Tribal Council hereby designates the \*\*\* Tribe Department of Natural Resources (DNR), working with the \*\*\* Department of Public Safety (\*DPS) and the Office of Tribal Attorney (OTA), to administer and enforce the provisions of this Ordinance.

### **SECTION 1202. Powers and Authorities of Enforcement Entities**

- (a) DNR may impose fines for non-compliance in increasing amounts for repeated violations, as follows:
  - (1) First Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$500.00.
  - (2) Second Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$1,000.00.
  - (3) Third Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$3,000.00.
  - (4) The above schedule may be adjusted depending on the scope of the violation and resulting damage, the violator's willfulness or recklessness, and other exacerbating (or mitigating) circumstances.
- (b) Claims of violations may also be investigated by \*DPS in collaboration with Tribal Fisheries, Cultural Officers, and Environmental Officers.
- (c) DNR or \*DPS may issue citations to any person or entity believed to have committed a violation of this Ordinance. The citation will explain in plain terms what conduct has violated the code, and shall include the following information:
  - (1) The specific conduct that violated the Ordinance, referring to the specific relevant section(s) in the Ordinance.
  - (2) The date(s) the conduct occurred or was discovered.



- (3) What steps must be taken by the violator to address the violation.
- (4) The date by which the violator must come into compliance with the Ordinance, including the development of a transition/phase-out plan with the Environmental Department to avoid the imposition of further penalties and fines.
- (5) The penalties that may be imposed if the offender continues to violate the Ordinance, including the filing of a civil action.
- (6) The contact information for DNR, and whether a meeting needs to be scheduled to discuss, in more detail, the reasons the conduct violated the Ordinance and how to avoid violating the Ordinance again.
- (7) That the offender may appeal, in writing, DNR's finding that a violation occurred, and the date by which this appeal must be received by the Tribal Court.

**SECTION 1203. Initial Notification**

- (a) Upon enactment, DNR shall make reasonable efforts to provide initial notification of this Ordinance to farming, forestry, and fishery operations within the territory and jurisdiction of the Tribe.
- (b) DNR shall make reasonable efforts to notify farming, forestry, and fishing operations of technical assistance and resources that may be available to assist with the transition from genetically engineered organisms to natural organisms.
- (c) Actions required of DNR in this section are intended to assist with compliance and assistance. Failure to receive notification does not waive or otherwise affect requirements for compliance with the provisions of this Ordinance.

**SECTION 1204. Required Disclosures**

Every person, corporation, or entity cultivating, raising, growing, spawning, incubating, or releasing genetically engineered or genetically modified organisms or other environmental contaminants must disclose to DNR, within thirty (30) days of enactment of this Ordinance, the location and description of existing or planned genetically engineered organisms involved, in order to develop a transition plan, approved by DNR, to phase out such organisms.

**SECTION 1205. Transition Plan**

Persons, corporations, or entities cultivating, raising, growing, spawning, incubating, or releasing genetically engineered or genetically modified organisms within the \*\*\* Tribe's territory and jurisdiction shall have up to twelve (12) months from the date of enactment to implement a transition plan as set forth in Section 1204 above to phase out planting, cultivating and harvesting of genetically engineered or genetically modified organisms.

**CHAPTER 3. PROCESS AND REMEDIES**

**SECTION 1301. Notification**

DNR shall notify any person, corporation, or entity that may be in violation of this Ordinance that any organisms in violation of this Ordinance are subject to confiscation and destruction.

**SECTION 1302. Response**

- (a) Any person, corporation or entity that receives notification shall have fifteen (15) days to respond to such notification with evidence that such organisms are not in violation of this Ordinance. Time for response may be shortened upon a showing of current, ongoing, and/or imminent harm or risk of genetic contamination.
- (b) If the notified party does not provide such evidence or if there is probable cause to believe genetically engineered organisms, DNR may take necessary actions required by law (such as obtaining a search warrant) to obtain access to the property and obtain material samples, in accordance with due process.

**SECTION 1303. Determination**

Upon receipt of any evidence under Section 1302 DNR shall consider such evidence and any other evidence that is presented or which is relevant to a determination of such violation. DNR shall act in good faith to make such determination as soon as possible, and before any genetic contamination may occur. If contamination has already occurred or cannot be prevented before the determination is completed, DNR shall make efforts to abate and prevent further contamination.

**SECTION 1304. Enforcement and Sanctions**

DNR shall work with OTA to develop appropriate enforcement forms and methods.

In addition to any remedies and penalties provided that may be available by law, the following sanctions may be imposed:

- (a) Any organisms that are the subject of violation of this Ordinance may be confiscated, quarantined, and destroyed before any genetic contamination may occur. If genetic contamination has already occurred, the contaminated organisms may be confiscated, quarantined, and destroyed in accordance with due process.
- (b) Testing, administrative, and abatement costs associated with the confiscation and destruction of organisms may be imposed on responsible parties (namely the person(s), corporation(s), or other entities responsible for the violation). If contamination has already occurred, costs for remediation of contamination may be imposed on responsible parties.
- (c) In imposing administrative and abatement costs and other fees, fines, and accrued interest on the responsible parties, DNR shall take into account the amount of actual and reasonably foreseeable damage and the degree of willfulness, reckless disregard, or negligence of the person, corporation, or entity involved. Fines shall be payable to the enforcing department.
- (d) The Tribe or any individual within the Tribe's jurisdiction shall have standing to assert any rights secured by this Ordinance (for violations occurring within the Tribe's territory) that have been violated or are threatened with violation, and may seek injunctive and/or compensatory relief from the Tribal Court. While an

individual may recover actual damages, any assessed fines are payable to the enforcing agency.

**SECTION 1305. Seizure and Forfeiture**

Property used to violate this Ordinance, along with any illegal substances in plain view, is subject to seizure and forfeiture and liens may be filed against the subject property.

**CHAPTER 4. PESTICIDE AND GEO EDUCATION COMMITTEE**

**SECTION 1401. Education Committee Established**

A GEO Education Committee is hereby established, with representatives from, but not limited to: DNR, KDPS, Tribal Court, OTA, Tribal Fisheries, and Cultural Programs. This Education Committee shall meet regularly and make recommendations to the Tribal Council regarding:

- (a) Educating the \*\*\* Tribal Community about the harmful environmental and health effects of genetically engineered organisms;
- (b) Tribal policies and legislation to prohibit genetically engineered organisms within the \*\*\* territory and jurisdiction; and
- (c) The viability of labeling and/or restricting the sale, promotion, or provision of genetically engineered food products within \*\*\* Tribal territory (in consultation with the \*\*\* Tribal Economic Development Department).

**SECTION 1402. GEO Guidelines**

In the event the GEO Education Committee proposes recommendations and guidelines regarding the safety of pesticides and/or genetically engineered food products sold or distributed on \*\*\* lands that the Tribe subsequently adopts by regular council action, the tribal resolution adopting such guidelines shall be attached to this Ordinance and a cause of action in Tribal Court or any court of competent jurisdiction shall be created to thereafter regulate or prohibit such sale or distribution of products the Tribe deems unsafe for human consumption pursuant to those adopted guidelines.

**CHAPTER 5. TRIBAL COURT REVIEW AND ENFORCEMENT**

**SECTION 1501. Tribal Court Enforcement**

Any person, corporation or entity that violates this Ordinance may be subject to prosecution before the \*\*\* Tribal Court and subject to civil damages, fines, penalties (including interest), and/or injunctive actions.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

THE FOREGOING ORDINANCE, ENTITLED THE \*\*\* ENVIRONMENTAL PROTECTION ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE \*\*\* TRIBAL COUNCIL ON \_\_\_\_\_, 2017, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF \_\_\_ FOR, \_\_\_ OPPOSED AND \_\_\_ ABSTENTIONS.

**DATED THIS \_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.**

\_\_\_\_\_  
\*, Chairperson  
\*\*\* Tribal Council

**ATTEST:**

\_\_\_\_\_  
\*, Secretary  
\*\*\* Tribal Council