

# Tribal Regulation of Pesticides

## *Model Ordinance*



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Northern California Tribal Court Coalition

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National  
Congress of  
American  
Indians



[Tribal Letterhead]

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

**\*\*\* TRIBE PESTICIDE ORDINANCE**

*Pursuant to its authority under Article \*, Section \* of the \*\*\* Constitution, the \*\*\* Tribal Council hereby enacts the following Ordinance regulating pesticides within \*\*\* Tribal territory:*

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## GENERAL PROVISIONS

### Title

This Ordinance shall be referred to as the \*\*\* Tribe Environmental Protection Ordinance or \*\*\* Environmental Ordinance.

### Definitions

*Agreement* means any written agreement, contract, memorandum of understanding (MOU) or other such legally binding document that indicates the Tribe has entered into a contractual relationship with another party.

*Department* means the Environmental Department.

*Director* means the Director of the Environmental Department.

*Environmental contaminants.* Any deleterious materials, events or activities that pose a threat to the environment and natural and human resources located within the \*\*\* Ancestral Territory and homelands, such as but not limited to: climate change; mining and extractive industries; genetic engineering and modification; pesticides, fungicides, rodenticides and algacides, and other toxic contaminants.

*Emergency* means an urgent need to mitigate or eliminate a pest that poses an imminent threat to the health, safety, and well-being of Tribe's members and resources.

*Household* means a family living together; a group of people who dwell under the same roof; or the contents of a dwelling space including both interior and exterior spaces.

*Household use* means the application, release manufacturing, producing, transporting, selling, trading, giving, applying, administering, releasing, dumping or disposing of pesticides within a dwelling or property meant for the primary purpose of human habitation.

\*\*\* *Ancestral Territory and homelands.* The geographic scope that is the area of subject matter for this Ordinance is defined as \*\*\*, as well as its tributaries within this area.

\*\*\* *Tribal Council.* Established in Article \* of the Constitution of the \*\*\* Tribe, this federally recognized tribal governmental entity has been delegated the authority and responsibility by the \*\*\* Tribal membership to exercise by resolution or enactment of Tribal laws all the inherent sovereign powers vested in the Tribe as a Sovereign Aboriginal People, including negotiating and contracting with federal, state, Tribal and local governments, private agencies and consultants.

\*\*\* *Tribe (Tribe).* A federally recognized Tribe since \*, the \*\*\* Tribe are Sovereign Aboriginal People that have lived on their own land since long before the European influx of white men came to the North Americans continent and have retained occupation of its Ancestral Territory and homelands.

*Label* means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

*Labeling* means all labels and all other written, printed, or graphic matter:

accompanying the pesticide or device at any time; or

to which reference is made on the label or in literature accompanying the pesticide or device.

Current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, and the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar U.S. Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides are not considered part of the labeling.

*Organism* means any living thing.

*Pest* means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a unwanted or that causes damage to other organisms.

*Pesticide* means any substance or mixture of substances, including but not limited to herbicides, insecticides, rodenticides and bait stations, and all Restricted Use Pesticides as defined and covered by the Federal Insecticide, Fungicide, and Rodenticide Act that are directly or indirectly represented, imported, manufactured, supplied, used or intended to:

destroy, stupefy repel, inhibit the feeding of, or prevent infestation by or attacks of, any pest in relation to a plant, a place or a thing;

destroy, regulate, defoliate, or dessicate a plant;

modify the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity;

modify an effect of another agricultural chemical product; or

attract a pest for the purpose of destroying it.

This definition does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes.

*Property* includes real estate, tangible goods (chattel), and intangibles.

*Tribal Sovereignty* means a Tribe's rights to govern itself, define its own membership, manage and protect its natural resources, safeguard the well-fare of its tribal communities, and regulate tribal business and domestic relations; it further recognizes the existence of a government-to-government relationship between such Tribe and the federal government. Contained within the concept of Tribal Sovereignty is also the decision-making power over a Tribe's food, medicine and fiber resources and the use thereof.

### **Authority**

This Ordinance, restricting environmental contaminants and associated activities from being released and executed within, or affecting, \*\*\* Ancestral Territory and homelands, is established by

the \*\*\* Tribal Council under the authority delegated to it in the \*\*\* Constitution.

### **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 chemical trespass or contamination within \*\*\* Ancestral Territory and homelands.

### **Findings**

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

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;

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;

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;

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;

The \*\*\* Tribe adopted a Constitution in order to:

Preserve forever our Tribe and protect it from forces which may threaten its existence;

Uphold and protect our Tribal Sovereignty which has existed from time immemorial and which remains undiminished;

Provide for the health, education, economy and social wellbeing of our members and future members; and

Restore, enhance, manage, develop, protect and regulate the Tribal fishery, Tribal water rights, Tribal forests, and all other natural and cultural resources within Tribal jurisdiction, as we understand our solemn mutual responsibilities to these entities;

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;

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;

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;

Pesticides contain toxic substances that generally may have a detrimental effect on human health and, in particular, have adverse effects on the most vulnerable: infants, children, elders, and individuals who are taking medications or have suppressed immune systems;

Toxic substances in pesticides may also have a detrimental impact on the well being of plants, animals and other living beings and entire ecosystems in our lands due to the pollution of air, water, soil, as well as to ceremonial, cultural, traditional and subsistence resources;

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.

### **Purpose**

The purpose of this Ordinance is to:

Maintain and protect Tribal Sovereignty, free from outside corporate interests and unnecessary and overreaching preemption by any outside governments;

Enhance the Tribe's regulatory control over its agriculture, environment, Tribal health, welfare, and economy as they pertain to potential threats from environmental contamination;

Prohibit any person, corporation, or entity from producing, transporting, selling, releasing or disposing of pesticides within \*\*\* Ancestral Territory and homelands;

Protect \*\*\* Ancestral Territory and homelands from pesticide hazards and educate \*\*\* Tribal communities about the risks of pesticide exposure to human and environmental health;

Pursue measures to phasing out the sale, provision, use and disposal of such pesticides within \*\*\* the \*\*\* Ancestral Territory and homelands;

Declare the \*\*\* Ancestral Territory and homelands to be a healthy and safe zone in which toxic pesticides and environmental contaminants are restricted; and a place where our traditional seeds, plants, animals and fish, and our children and future generations have the opportunity to thrive in health, strength and harmony; and

Enable the \*\*\* Tribe to enforce the pesticide prohibitions and recover the costs of such enforcement.

### **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.

### **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.

### **Effective Date**

This ordinance shall take full effect immediately after adoption by the \*\*\* Tribal Council for unlawful pesticide applications, with a 12 month phase-in period for community education and notification regarding lawful household pesticide application.

### **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. PESTICIDES**

### **Prohibited Activities**

It shall be unlawful for any person, corporation, or other entity to manufacture, produce, transport, sell, apply, administer, or dispose of pesticides within the territory and jurisdiction of the Tribe.

It shall be unlawful for any person, corporation, or other entity that is exempted from prohibited activities under this ordinance to transport, apply, use, release, administer, store, or dispose of any pesticide within the territory and jurisdiction of the Tribe, in violation of the manufacturer's current, EPA-approved labeling. The Tribe may enforce such violations to the extent possible pursuant to applicable laws.

### **Exemptions to Prohibited Activities**

State or federally licensed medical research institutions, medical laboratories, medical manufacturing facilities engaged in licensed medical production, or medical research involving pesticides 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 of any pesticides to the outside environment.

Educational or scientific research institutions working with pesticides 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 of any pesticides to the outside environment.

Any institution listed in (a) or (b) above that intentionally or negligently allows release of any pesticide into the outside environment is in violation of this Ordinance and subject to enforcement as set forth herein.

#### Household use

Household use of pesticides during the first twelve (12) month educational phase-out period. No prior written permission from the Tribe is required for household pesticide use during this phase-out period.

#### Emergency Exemption

In cases that constitute an emergency as defined in this ordinance, a person, corporation, or entity may apply to the Director for an emergency exemption from the prohibition of Section 1101 of a pest outbreak poses an imminent threat to public health, or if significant damage to tribal resources or property would result from the inability to use a pesticide prohibited by Section 1101. The Director may impose specific conditions for the granting of emergency exemptions. The risks between the imminent threat that might be abated by the pesticide use will be weighed against the harm caused by such pesticide use in considering emergency exemptions.

#### Discretionary Exemption

The Director may grant an exemption to apply a pesticide where application is prohibited if the applicant shows that:

Effective alternatives are unavailable;

Granting an exemption will not violate the laws of the \*\*\* Tribe or the purpose of this ordinance; and

The use of the pesticide for which the exemption is requested is necessary to protect human health or tribal resources.

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

### **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.

### **Powers and Authorities of Enforcement Entities**

DNR may impose fines for non-compliance in increasing amounts for repeated violations, as follows:

First Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$500.00.

Second Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$1,000.00.

Third Offense: The Code Enforcement Officer may, in its sole discretion, impose a fine up to \$3,000.00.

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.

Claims of violations may also be investigated by \*DPS in collaboration with Tribal Fisheries, Cultural Officers, and Environmental Officers.

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:

The specific conduct that violated the Ordinance, referring to the specific relevant section(s) in the Ordinance.

The date(s) the conduct occurred or was discovered.

What steps must be taken by the violator to address the violation.

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.

The penalties that may be imposed if the offender continues to violate the Ordinance, including the filing of a civil action.

The contact information for DNR, and either:

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; or

Notice that this matter will be heard before the \*\*\* Tribal Court.

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.

### **Initial Notification**

Upon enactment, DNR shall make reasonable efforts to provide initial notification of this Ordinance to farming, forestry, commercial operations and households within the territory and jurisdiction of the Tribe.

DNR shall make reasonable efforts to notify farming, forestry, commercial operations and

households of technical assistance and resources that may be available to assist with the transition from pesticides to safer alternatives for pest management.

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.

### **Required Disclosures**

Every person, corporation, or entity using pesticides as defined in this Ordinance must disclose to DNR, within ninety (90) days of enactment of this Ordinance, the location and description of existing or pesticides involved, in order to develop a transition plan, approved by DNR, to phase out such use.

### **Transition Plan**

Persons, corporations, or entities manufacturing, producing, transporting, selling, applying, administering, or disposing of pesticides within the \*\*\* Tribe's territory and jurisdiction shall have up to twelve months from the date of enactment to implement a transition plan as set forth in Section 1204 to phase out such activities.

## **CHAPTER 3. PROCESS AND REMEDIES**

### **Notification**

DNR shall notify any person, corporation, or entity that it discovers may be in violation of this Ordinance that any substances in violation of this Ordinance are subject to confiscation, safe disposal, and other remedies as set forth in this ordinance.

### **Response**

- (a) Any person, corporation, or entity that receives notification shall have fifteen (15) days to respond to such notification with evidence that such activities are not in violation of this Ordinance. Time for response may be shortened upon a showing of current, ongoing, or imminent harm.
- (b) If the notified party does not provide such evidence or if there is probable cause to believe that prohibited materials are present or violations are occurring, DNR may take necessary actions required by law (such as obtaining a search warrant) to obtain access to the property and obtain material samples, and/or safely confiscate and store dangerous substances, equipment and any other evidence or prohibited materials in accordance with due process.

### **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 environmental damage may occur. If such damage has already occurred or cannot be prevented before the determination is completed, DNR shall make efforts to abate and prevent further contamination.

## **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:

Any materials that are the subject of violation of this Ordinance may be confiscated in accordance with due process. If toxic substances have already been released, contaminated materials or property may be confiscated or quarantined in accordance with due process;

Testing, administrative, and abatement costs associated with the remediation of lands or waters or treatment of humans or other living beings required to care for or reverse the damage of pesticides 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.

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.

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.

## **Seizure, Forfeiture and Liens**

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 EDUCATION COMMITTEE**

### **Education Committee**

A Pesticide 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:

Educating the \*\*\* Tribal Community about the harmful environmental and health effects of pesticides;

Tribal policies and legislation to regulate and reduce pesticides use within the \*\*\* Territory and jurisdiction;

Development of an Integrated Pest Management Plan to include viable alternatives and safest pest eradication methods and resources, including bringing pest management companies and vendors into compliance with this Ordinance;

The viability of labeling and/or restricting the sale, promotion, or provision of pesticides within the Tribal territory (in consultation with the \*\*\* Tribal Economic Development Department).

**Pesticide Guidelines**

In the event the Pesticide Education Committee proposes recommendations and guidelines regarding the safety of pesticides 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 pursuant to those adopted guidelines.

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

**SECTION 1502. Tribal Court Enforcement**

Any person, corporation, or entity that violates of 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