

TABLE OF CONTENTS:

Chapter 1 Purpose; Definitions; Pesticide Control Committee.....1

Chapter 2 Definitions.....1

Chapter 3 Pesticide Control Committee.....3

Chapter 4 Tribal Certificates, Permits and Licenses.....5

Chapter 5 Records & Reports.....8

Chapter 6 General Provisions.....8

Chapter 7 Registration of Pesticides.....8

Chapter 8 Use of Registered Pesticides.....9

Chapter 9 Prohibitions.....9

Chapter 10 Judicial Proceedings.....9

Chapter 11 Sovereign Immunity.....10

Chapter 12 Severability.....10

CHAPTER ONE PURPOSE; DEFINITIONS; PESTICIDE CONTROL COMMITTEE

- I. **Purpose** - The Chippewa Cree Tribe Business Committee finds that:
- A. The economic welfare of the Tribe, its members, and other residing or working within the Reservation is dependent upon agricultural use and development of lands within the exterior boundaries of the Reservation;
 - B. Maximum benefit from such use and development requires application of various pesticides within the Reservation;
 - C. Use of pesticides may be required periodically for maintenance of healthful conditions within the Reservation; and
 - D. Improper use may jeopardize the public health, safety and welfare.
 - E. Therefore, the Chippewa Cree Tribe Business Committee finds it necessary to provide for the safe production, sale, purchase, processing, transportation, handling, storage, application, disposal and other use of pesticides within the Reservation by the enactment of this ordinance; by the creation of the Pesticide Control Committee; and by the authorization delegated to the Committee to adopt a pesticide control program and rules and regulations, and to enforce this Ordinance, that program and those rules and regulations.

CHAPTER TWO DEFINITIONS OF TERMS

- I. **Definitions of Terms** - As used in this ordinance, the terms set forth below shall have the following meanings:
- A. **Pesticide:** Any substance or mixture of substances intended to be used for (i) preventing, destroying, repelling or mitigating any pest, or (ii) causing the leaves or foliage to drop from a plant or artificially accelerating the drying of plant tissue, or (iii) accelerating or retarding the rate of growth or maturation, or otherwise altering the behavior of plants or produce thereof, but not to include the substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. Any substance or mixture of substances defined or designated as a pesticide or a plant regulator pursuant to FIFRA and Tribal regulations shall be a pesticide pursuant to this ordinance.
 - B. **Restricted Pesticide:** Any pesticide designated as such by the Committee upon a determination that it is or may be so toxic, hazardous or otherwise detrimental to humans, or to their environment, animals or crops, that particular provisions should be made applicable to its sale, production, processing, transportation, handling,

storage, application, disposal or other use in order to adequately protect the public health, safety and welfare. Any pesticide defined or classified for restricted use, or for both restricted use and general use, pursuant to FIFRA and tribal regulations shall be a restricted pesticide pursuant to this ordinance.

- C. **Pests:** For all purposes of this ordinance, pests are all things included within the definition of that term in FIFRA and Tribal regulations.
- D. **Reservation:** The Rocky Boy's Indian Reservation, as established, existing and geographically defined under the laws of the United States, encompassing all territory within its exterior boundaries as now or hereafter prescribed or ascertained, including all trust lands, fee lands, allotted lands, town sites, roads, waters and lands with rights of way owned, used or claimed by any person. The term Reservation lands shall also include lands that the Tribe assumes pesticide regulatory jurisdiction over via a cooperative agreement with any other governmental agency pursuant to Paragraph 9 of this article. References herein, and in the rules, regulations or orders of the Committee, to "within the Reservation" shall be deemed to include the air space both over the surface of the Reservation and in such proximity to it that any pesticide released in such air space is deposited or reasonably could be expected to drift over or otherwise be deposited within the exterior boundaries of the Reservation.
- E. **FIFRA:** The Federal Insecticide, Fungicide and Rodenticide Act of 1972, Public Law 92-516, Section 2, 86 Stat. 973 et seq., 7 U.S.C. Sections 136 et seq., as amended and as it may be amended from time to time hereafter. Reference in this ordinance to FIFRA shall be deemed to be reference to FIFRA as it shall have been amended as of the time of the application of the reference.
- F. **Committee:** The Pesticide Control Committee created by this Ordinance.
- G. **Person:** Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, including a person acting in a fiduciary or representative capacity, and further including any governmental agency.
- H. **Certified Applicator:** The term "certified applicator" means any individual who is certified under FIFRA as authorized to use or supervise the use of any pesticide which is classified for restricted use.
- I. **Private Applicator:** The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.
- J. **Commercial Applicator:** the term "commercial applicator" means an applicator

whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by the above definitions set forth in Private Applicator.

CHAPTER THREE PESTICIDE CONTROL COMMITTEE

I. Pesticide Control Committee:

- A. **Establishment:** There is hereby established a Pesticide Control Committee to consist of ___ members of the Tribe, to be appointed by the Chippewa Cree Tribe Business Committee for terms of ___ years. To provide for a staggering of terms of Committee members, the first ___ Committee member(s) shall be appointed for one term of ___ years and ___ terms of ___ years. Committee members may be removed by the Business Committee at any time, with or without cause. If a member of the Committee is removed, resigns or otherwise unable to serve, a replacement shall be appointed by the Business Committee and such replacement shall serve the remaining term of the replaced member. One of the member shall be designated by the Tribal Chairman as the Chairman of the Pesticide Committee. The expenses of the Committee, including staff, equipment and training, shall be pursuant to a budget to be approved the Business Committee.
- B. **Function:** The Committee shall adopt and implement a pesticide control program, and rules and regulations pursuant thereto; and it shall enforce this ordinance, that program and those rules and regulations to protect the health, safety and welfare of all residents of the Reservation against adverse health effects of the production, processing, sale, purchase, transportation, handling, storage application and other use, and disposal of pesticides within the Reservation. The Tribal Council recognizes that technical and scientific aspects off pesticides, and their production, processing, transportation, handling, storage, application and use, and disposal are subject continuously to new discoveries, modifications and requirements which cannot be adequately provided for specifically by an ordinance, therefore, the Committee is authorized and directed to utilize all reasonably available resources and services to regularly monitor such developments, and by its rules and regulations to adopt and impose such restrictions, requirements, and controls upon the sale, purchase, production, processing, transportation, handling, storage, application, disposal and other use of pesticides within the Reservation as, considering all reasonably available and material data and information, appear technically and scientifically reasonable for the protection of the public health, safety and welfare.
- C. **Authority:** The authority of the Committee shall include but shall not be limited to the following procedures and undertakings, as may be necessary, reasonable or appropriate for the protection of public healthy, safety and welfare, and to prevent harm desirable plants and animals, and the environment:

1. To designate restricted pesticides.
2. To restrict, regulate or prohibit the sale, purchase, production, processing, transportation, handling, storage, application, disposal or other use of restricted pesticides within the Reservation.
3. To require, restrict, regulate or prohibit the use of designated facilities, equipment, materials and methods for the purchase, sale production, processing, transportation, handling, storage, application, disposal or other use of restricted pesticides within the Reservation.
4. To enter in a lawful manner any public or private premises within the Reservation to observe or inspect:
 - a. any stores of any pesticide,
 - b. any apparatus, aircraft, vehicle, equipment, supplies, materials, storage and handling areas and facilities, disposal sites and devices which are used or intended for the use for production, processing, transportation, handling, storage, application, disposal or other use of restricted pesticides.
5. To designate geographical areas, and times and circumstances, where or when within the Reservation and production, processing, transportation, handling, storage, application or disposal or other use of restricted pesticides shall be restricted, regulated or prohibited.
 - a. To require, issue or approve certifications, permits and licenses for productions, processing, sale, distribution, transportation, storage applications or disposal or use of restricted within Reservation.
 - b. To issue and enforce rules, regulations and order to implement this ordinance and the pesticide control program. Such committee rules, regulations and orders may include adoption or incorporation of laws, rules, regulations, orders or other requirements prescribed by the United States of America or by any State or States with respect to pesticides.
 - c. To impose civil fines and penalties for violation of this ordinance, and rules, regulations, orders, certificates, licenses and permits issued pursuant hereto, not to exceed \$ _____ for each violation.
 - d. To obtain advice and assistance of Federal, Tribal, State, County and municipal government agencies, and private agencies, and

persons with technical expertise, in the adoption and implementation of a pesticide control program; to coordinate activities and cooperate with such other governmental agencies having similar or related responsibilities within their respective jurisdictions; and to utilize the Chippewa Cree Tribal Court to enforce the pesticide control program, this ordinance, and the rules regulations and orders adopted pursuant to this ordinance. The Committee may enter into cooperative agreements with such other governmental agencies providing for coordination in regulating and controlling restricted pesticides; including the Tribe's assumption of regulatory jurisdiction over any lands outside the boundaries of the Reservation that are or may be affected by pesticides.

- e. To designate authorized representatives of the Committee and to delegate to them authority to act on behalf of the Committee in the conduction of inspections, observations, inquiries and enforcement of this ordinance, the pesticide control program, rules, regulations and orders adopted by the Committee. Such representatives may include employees, agent and representatives of federal, Tribal, state, county and municipal government agencies.
- f. To make such reports to the Administrator of the Environmental Protection Agency in a manner and containing the information that the Administrator may, from time to time, require.

All rules, regulations and orders issued by the Committee within the scope of its authority and responsibility hereunder, and consistent with the stated purpose of the Business Committee and Tribal law shall have the force of law as if set forth in full in this ordinance.

II. Application of Pesticides:

CHAPTER FOUR TRIBAL CERTIFICATES, PERMITS AND LICENSES

I. Tribal Certificates, Permits and Licenses:

- A. **General Pesticide License** - No person shall produce, store, process, transport, distribute, handle, sell or offer to sell, apply, dispose or otherwise use any pesticide within the Reservation without a Tribal Pesticide License.
- B. **Restricted Pesticide License** - No person who would be a "certified operator", "commercial applicator" or "private applicator" of restricted pesticide under FIFRA shall apply or otherwise use, or supervise the application or other usage of any

restricted pesticide within the Reservation without a current Tribal Restricted Pesticide License issued by the Committee.

- C. **Revocation** - Revocation, suspension or expiration or other termination of any federal or state certificate, license or permit issued pursuant to FIFRA and Tribal regulation shall constitute automatic cancellation of the Tribal license issued by the Committee.
- D. **Applications** - Application for Tribal license for pesticides or for restricted pesticides shall be in such form as is prescribed by the Committee.
- E. **Issuance** - Issuance of a Tribal license for restricted pesticides shall be dependent upon the applicant demonstrating to the Committee, or its designated representative, that the applicant:
1. is certified with respect to the application, use and handling of restricted pesticides; (ii) is familiar with the nature and characteristics of them, and the dangers which may result from their application, use and handling;
 2. is knowledgeable about, and able and willing to take appropriate precautions to protect the public health, safety and welfare;
 3. has suitable equipment, in safe and proper operating condition, for such application or other usage, with trained, reliable and responsible operators, as appropriate;
 4. has not demonstrated lack of reasonable care and responsibility in prior processing, transportation, handling, storage, application, disposal or other usage of pesticides within the Reservation or elsewhere.

The demonstration or other satisfaction of the foregoing requirements may be by oral or written examination, completion of training courses, actual field operation, questionnaires or reports from other agencies or persons, reliance upon federal and state certifications and licenses, or any combination of all or any of the foregoing; or such other appropriate means which may be adopted by the Committee.

- F. **Qualification, Conditions and Restrictions** - Any Tribal license issued by the Committee may be made subject to any reasonable qualifications, conditions, restrictions and limitations deemed appropriate by the Committee.
- G. **Financial Responsibility** - Before issuing a Tribal license, the Committee shall require proof of financial responsibility consisting of either a deposit of money, liability insurance, surety bond or certified check protecting persons, and those claiming under them, who may suffer death, injury, illness or property damage as a result of the operations of the applicant. The Committee shall not accept any bond or liability insurance except from companies authorized to do business in the State of

Montana. The amount of the deposit, insurance or bond, unless a greater amount is specified by the Committee, shall be \$_____ for property damage, personal death, injury or illness and public liability insurance, each separately and shall be maintained in not less than that sum at all times during the licensing period. Insurance shall be written in a form acceptable to the Committee and shall be evidenced by certificates delivered to the Committee. Each policy by appropriate endorsement or other provision shall provide for written notice to the Committee at least ten (10) days before any cancellation or material change thereof. The Tribal license of an applicator who permits the security to fall below the required sum shall be suspended by the Committee until the Security meets the minimum financial requirements. The Committee may increase the amount of required deposit, insurance, surety bond or other security at any time upon fifteen (15) days notice to the holder of the license.

- H. **Term** - A Tribal license may be issued by the Committee for any period not to exceed one calendar year, or the remaining portion of the year for which issued. It may be renewed annually upon application to the Committee, and satisfaction of all qualifications and prerequisites therefore.
- I. **Fees** - there shall be a fee charged for the issuance and each annual renewal of a Tribal license, and an additional fee for the reactivation of any such license which is suspended for any reason. The Committee shall establish an applicable fee schedule which it may be revised time to time. All such fees shall be submitted through the Committee and made payable to the Chippewa Cree Tribe.
- J. **Other Licenses** - The Committee may require such other certificates, licenses and permits as it deems appropriate as a condition to the production, processing, transportation, distribution, sale or offer for sale, handling, storage, application or other use, disposal of restricted pesticides within the Reservation.
- K. **Additional Requirements** - The Committee may modify or increase the requirements, conditions, restrictions, and limitations imposed upon any person holding any Tribal certificate, license or permit issued by the Committee, as such reasonably appears desirable to the Committee to protect the public health, safety or welfare.
- L. **Remedies** - In addition to all other remedies the Committee may suspend or cancel any Tribal certificate, license or permit upon determining that the holder thereof has violated or failed to comply with any applicable term, condition or provision of the certificate, license or permit, this ordinance, any rule, regulation, or order pursuant hereto, or FIFRA and Tribal regulation or upon a determination by the Committee that the holder is operating within the Reservation or elsewhere in a careless or negligent manner, or has made false, inaccurate or incomplete statements in the reports concerning pesticide operations or certifications required by this ordinance or in the application for a Tribal certificate, license or permit, or is operating with improper or unsafe equipment or with adequate, competent and responsible personnel. Such

suspension or cancellation shall be upon written notice, and opportunity for hearing before the Committee not less than ___ days after notice; unless the Committee determines that an emergency situation exists, in which event there shall be immediate suspension upon notice, to be followed by such a hearing within ___ days.

CHAPTER FIVE RECORDS AND REPORTS

I. Records and Reports:

Each person who applies or otherwise uses restricted pesticides pursuant to a Tribal certificate, license or permit shall keep a record of each property treated and, upon request by the Committee, shall furnish copies of said records to the Committee. Such records shall be kept by such person for the period of two years, unless a longer period is specified by the committee, and shall contain the name and address of the owner of the property and exact location of the property treated; the crop treated; the pest or pests involved; the name, type and strength of pesticide used; a description of the method by which such pesticide is applied; the name and address of the person or firm where the pesticide was purchased; the name and address of the persons applying the pesticide, the date, month, year and time of day of application; the direction and estimated velocity of the wind at the time of application and a description of the principal equipment used therefore; name, address and certification number of the person or person who disposed of the pesticide containers, the type of container and the manner and location in which the containers were disposed of.

CHAPTER SIX GENERAL PROVISIONS

I. General Provisions:

CHAPTER SEVEN REGISTRATION OF PESTICIDES

I. Registration of Pesticides:

No person shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, ship, transport, receive or offer to deliver, store, apply or otherwise use any pesticide within the Reservation unless that pesticide is properly and currently registered pursuant to both the FIFRA and Tribal regulations provided, however, that if an unregistered pesticide is subject to an experimental use permit issued pursuant to the FIFRA, the Committee may authorize its experimental use by the permittee within the Reservation in strict compliance with the terms of the permit and such additional restrictions or requirements as may be imposed by the Committee. Any other exemptions from registration of pesticides pursuant to the FIFRA and Tribal regulations shall be inapplicable within the Reservation.

CHAPTER EIGHT USE OF REGISTERED PESTICIDES

I. Use of Registered Pesticides:

Any person who produces, processes, distributes, sells or offers for sale, transports, handles, stores, applies and disposes or otherwise uses within the Reservation any pesticide registered as required by Article III, Section 1 of this ordinance shall do so only in strict conformity with the terms and provisions of FIFRA and this Ordinance.

CHAPTER NINE PROHIBITIONS

I. Prohibitions:

No person shall produce, process, distribute, sell, purchase, offer for sale, hold for sale, deliver, shop, transport, handle, store or apply or otherwise use, or dispose of any pesticide within the Reservation if such activity or the manner of its conduct under the circumstances would be prohibited by FIFRA and Tribal regulations or rules, regulations or order issued pursuant thereto.

CHAPTER TEN VIOLATIONS AND PENALTIES

I. Violations and Penalties:

Any person who violates or fails to comply with any requirement, provision or condition of this ordinance, any Committee rules, regulation, or order, or any Tribal certificate, license, or permit, or condition, qualification, restriction, or limitation thereon, issued by the Committee shall be guilty of a civil or criminal offense for each such offense and shall be subject to a fine not to exceed \$ _____, or imprisonment for a period not exceed _____ months, or both.

CHAPTER ELEVEN JUDICIAL PROCEEDINGS

I. Judicial Proceedings:

If at any time it appears to the Committee that any person has violated or failed to comply with the provision of this ordinance, or any rule, regulation or order of the Committee, or the Tribal certificate, license or permit issued by the Committee, then the Committee, or its representatives so authorized by it, may institute proceedings in the Chippewa Cree Tribal Court for any appropriate remedies, whether criminal or civil in nature, including injunctive

relief, seizure and forfeiture, and the posting of bonds or sureties to insure compliance. The foregoing shall not be deemed to limit or restrict the Committee or any person from taking other appropriate action, including issuance of cease and desist orders, and giving notification to representatives of Federal, Tribal, State, County or municipal government agencies, if it appears that any person has violated or failed to comply as aforesaid; provided, however, the Committee and those acting on its behalf shall not undertake in its name or that of the Tribe any action in any court other than Tribal court.

II. Application of Law:

Any person who shall enter within the exterior boundaries of the Reservation shall become subject to this ordinance and all rules, regulations and order of the Committee, and shall be deemed to have consented to the jurisdiction of the Chippewa Cree Tribal Court, and shall be subject to the Civil/and or Criminal prosecution in the Chippewa Cree Tribal Court for violations of this ordinance and all rules, regulations and orders of the Committee. Such person shall also be deemed to have consented to the jurisdiction of the Committee, its authorized representatives and the Tribal Police.

III. Judicial Review:

- A. Decisions of the Committee shall be subject to the judicial review by the Chippewa Cree Tribal Court to the extent permitted or authorized by Tribal law; however, there shall be no cause of action against the Committee or any member or authorized representative thereof for insufficient or negligent regulation or other negligent acts under this Ordinance.
- B. All property including funds acquired or held by the Committee or members thereof shall be wholly exempt from levy and sale by virtue of an execution, and no execution or other judicial or administrative process shall issue against the same, nor shall any
- C. Judgment against the committee by a charge, lien or other encumbrance upon such property.

CHAPTER TWELVE SOVEREIGN IMMUNITY

I. Sovereign Immunity:

Nothing contained in this ordinance and no action of the Committee is intended or shall be deemed to waive, limit or modify the sovereign immunity of the Chippewa Cree Tribe or shall be construed as a consent by the Tribe to suit against the Tribe or any member thereof, or consent by the Tribe to the jurisdiction of any judicial or administrative body.

CHAPTER THIRTEEN SEVERABILITY

I. Severability:

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remaining provisions or applications which can be given without the invalid provision or application shall continue in full force effect.

