



# WHITE EARTH RESERVATION

**CHAIRMAN** Michael Fairbanks **SECRETARY-TREASURER** Michael LaRoque  
**DISTRICT I** Henry Fox **DISTRICT II** Eugene Sommers **DISTRICT III** Laura Lee Erickson

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## NOTICE TO TRIBAL MEMBERSHIP

Date: August 19, 2024

From: Laurie York, Executive Director

Re: Natural Resources – Proposed Amendment to White Earth Environmental Code – Pesticide and Chemical Ordinance

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Attached please find the proposed amendment to the above referenced Code in the Environmental Code. Pursuant to White Earth Reservation Business Committee Resolution No. 001-16-0174, this notice to membership will be posted for a 15-day comment period, ending on September 3, 2024 at close of business. All comments may be made in writing and shall be respectful and constructive. The proposed amendment is currently under consideration by the White Earth Reservation Business Committee.

After completion of of the 15-day comment period, all comments will be considered by the White Earth Reservation Business Committee. The comments will be summarized, this summary and summary responses will be publicly posted.

Upon receipt of a final draft, the Executive Director will post another notice of Tribal membership for an additional 15 days, after which the White Earth Reservation Business Committee will consider for a vote at a White Earth Resevation Business Committee meeting.

Thank you in advance for your consideration and input.

**WHITE EARTH RESERVATION BUSINESS COMMITTEE**

**WHITE EARTH BAND OF CHIPPEWA INDIANS**

Resolution No. 05724-036

**WHEREAS,** the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section I, of the revised constitution and bylaws of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

**WHEREAS,** the White Earth Reservation Business Committee is the duly authorized governing body of the White Earth Band, and

**WHEREAS,** the White Earth Reservation Business Committee desires to amend the White Earth Environmental Code Pesticide and Chemical Code §300.00 – 300.014 to better conform with federal law and with the support of the Environmental Protection Agency, and

**WHEREAS,** the White Earth Reservation Business Committee adopted Resolution No. 001-16-017A in part to provide a transparent process for the consideration and approval of Tribal Ordinances, and

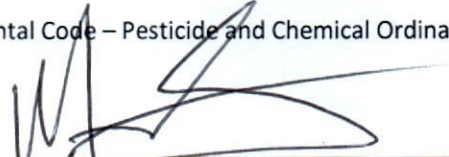
**WHEREAS,** the White Earth Reservation Business Committee determined the revised Pesticide and Chemical Ordinance is ready to issue public Notice to Tribal membership which shall commence a 15 day public comment period, and

**WHEREAS,** the White Earth Reservation Business Committee shall consider the received comments and provide a public summary of responses no later than 30 days after the public comment period, and

**WHEREAS,** the White Earth Reservation Business Committee shall publicly post the final version of the White Earth Environmental Code's Pesticide and Chemical Ordinance for an additional 15 days before a work session for a final vote, now

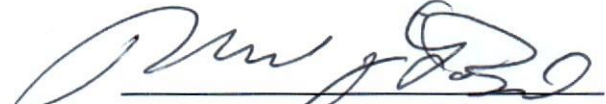
**THEREFORE BE IT RESOLVED,** that the White Earth Reservation Business Committee hereby directs the Executive Director to issue a public Notice pursuant to Resolution No. 001-16-17A to commence the public posting comment period on August 19, 2024 and commence the process outlined above.

We do hereby certify that the foregoing resolution was adopted by a vote of 4 for, 0 against, 0 silent, a quorum being present at a regular meeting of the White Earth Reservation Business Committee held on July 24, 2024 in Mahnomen Minnesota.



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Michael A. Fairbanks, Chairman



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Michael LaRoque, Secretary/Treasurer

**PROPOSED**  
**W.E.E.C. 300.00 PESTICIDE AND CHEMICAL CODE**

**W.E.E.C. 300.01 Title**

This section of the White Earth Environmental Code is known as the Pesticide and Chemical Code. References herein to the “Code” refer to the Pesticide and Chemical Code.

**W.E.E.C. 300.02 Scope**

The Pesticide and Chemical Code applies to all Producers, Distributors, Sellers, Purchasers, Transporters, Handlers, Stors, Applicators, Dealers or Disposers of Pesticides on land within the exterior boundaries of the White Earth Reservation. This Code also applies to applications of Fertilizer using Chemigation.

**W.E.E.C. 300.03 Definitions**

Subd. 1) Antisiphon Device has the meaning provided in W.E.E.C. § 102.00, Subd. 13.

Subd. 2) Applicator means a Person who is required to have a private or commercial applicator certification or license under Minnesota Statute 18B et seq.

Subd. 3) Band has the meaning provided in W.E.E.C. § 102.00, Subd. 19.

Subd. 4) Body of Water has the meaning provided in W.E.E.C. § 102.00, Subd. 24.

Subd. 5) Certification means a certification required under Minnesota Statute § 18.36.

Subd. 6) Check Valve Device has the meaning provided in W.E.E.C. § 102.00, Subd. 36.

Subd. 7) Chemigation has the meaning provided in W.E.E.C. § 102.00, Subd. 37.

Subd. 8) Dealer means a Person who distributes a Pesticide within the exterior boundaries of the White Earth Reservation to an end user. This action would commonly be called a retail sale.

Subd. 9) Defoliant means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Subd. 10) Desiccant means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Subd. 11) Distributor means a Person selling, bartering, shipping, delivering for shipment, receiving, delivering for use, or offering to deliver Pesticides within the exterior boundaries of the White Earth Reservation.

Subd. 12) Endangered Species has the meaning provided in W.E.E.C. § 102.00, Subd. 64.

Subd. 13) Fertilizer means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content and designed for use in promoting plant growth.

Subd. 14) License means a license required under Minnesota Statutes § 18.29-18.35.

Sub. 15) Non-Target Organisms has the meaning provided in W.E.E.C. § 102.00, Subd. 137.

Subd. 16) Person has the meaning provided in W.E.E.C. § 102.00, Subd. 147.

Subd. 17) Pesticide Coordinator has the meaning provided in W.E.E.C. § 102.00, Subd. 149.

Subd. 18) Pesticide has the meaning provided in W.E.E.C. § 102.00, Subd. 148.

Subd. 19) Pesticide Labeling means labeling meeting the requirements of 40 C.F.R. § 156.10.

Subd. 20) Plant regulator means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof but shall not include substances

to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term “plant regulator” shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

Subd. 21) Registration means registered with the Environmental Protection Agency in accordance with the requirements of 40 C.F.R. § 152 et seq.

Subd. 22) Reservation Business Committee means the duly elected governing body of the White Earth Reservation pursuant to Article VI, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended and organized under Section 16 of the Act of June 18, 1934 (48 Stat. 984).

Subd. 23) Restricted Area means Band forests, Minnesota state forests, Tamarac National Wildlife Refuge, Hamden Slough National Wildlife Refuge, Wildlife Management Areas, Waterfowl Production Areas, Aquatic Management Areas and Scientific and Natural Areas.

Subd. 24) Restricted-entry Interval (“REI”) means the time after the end of a Pesticide application during which entry to a treated area is restricted.

Subd. 25) Restricted Use Pesticide (“RUP”) has the meaning provided in W.E.E.C. § 102.00, Subd. 170.

Subd. 26) Right-Of-Way has the meaning provided in W.E.E.C. § 102.00, Subd. 171.

Subd. 27) Spray Drift means the movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended.

Subd. 28) Volatilization means the movement of pesticide vapors through the air. Volatilization is different than pesticide movement by Spray Drift.

Subd. 29) Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Subd. 30) White Earth Department of Natural Resources or Department means the agency with delegated authority from the White Earth Reservation Business Committee to protect, restore and regulate the natural resources of the Band and Band members in order to ensure environmental and human health and spiritual, cultural and economic sustainability of the Band.

Subd. 31) White Earth Reservation has the meaning provided in W.E.E.C. § 102.00, Subd. 219.

#### **W.E.E.C. 300.04 Authority of the White Earth Department of Natural Resources and the Pesticide Coordinator**

The White Earth Department of Natural Resources and Pesticide Coordinator, pursuant to the Department’s delegated authority to protect, restore and regulate the natural resources of the Band in order to ensure environmental and human health and spiritual, cultural and economic sustainability of the Band are authorized to implement and enforce the provisions of this Code.

#### **W.E.E.C. 300.05 Unlawful Acts** It shall be unlawful under this Code for any Person to:

Subd.1) Interfere with the lawful enforcement of this Code.

Subd.2) Disturb, move, damage, obstruct or interfere with any equipment or activities of the Pesticide Coordinator.

Subd.3) Sell, purchase, process, transport, handle, store, apply, dispose of or otherwise use a Pesticide within the White Earth Reservation without a duly authorized License or Certification from the Minnesota Department of Agriculture.

Subd.4) Make misrepresentations in applying for or renewing a License or Certification.

Subd.5) Fail to keep and submit records and annual reports as follows:

- a. Restricted Use Pesticide Application Records. In a reasonably accessible electronic format, keep a record of Restricted Use Pesticide applications including the name and address of the person for whom the Restricted use Pesticide was applied; the name and certification number of the applicator that made the Restricted Use Pesticide application; the date and time of Restricted Use Pesticide application; amount of Restricted Use Pesticide applied (total and per acre); Restricted Use Pesticide dilution rate; total acreage of Restricted Use Pesticide application; specific type of Restricted Use Pesticide applied, including the brand or product name and Environmental Protection Agency registration number of the applied Restricted Use Pesticide; method of Restricted Use Pesticide application; location of Restricted Use Pesticide application; crop, commodity, stored product, or site to which the Restricted Use Pesticide was applied; and weather conditions, including wind speed. Application records must include a legible map identifying Bodies of Water and Rights-of-Way within one-quarter mile of Restricted Use Pesticide application site.
- b. Restricted Use Pesticide Dealer records. In a reasonably accessible electronic format, record and maintain at each individual dealership, records of each transaction where a Restricted Use Pesticide is distributed or sold to any person. Records of each such transaction must include all of the following information: name and address or principle place of business of each certified applicator to whom the Restricted Use Pesticide was distributed or sold; the certification number on certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase a Restricted Use Pesticide; the expiration date of the applicator's certification; the category(ies) in which the applicator is certified relevant to the pesticide(s) sold; the product name and Environmental Protection Agency registration number of the Restricted Use Pesticide(s) distributed or sold in the transaction, including the applicable emergency or State special local need registration number; the quantity of the Restricted Use Pesticide(s) distributed or sold in the transaction; and the date of the transaction.
- c. Annual Reports. By November 1 of each year, in a reasonably accessible electronic format, submit an annual report to the Pesticide Coordinator including all Restricted Use Pesticide application records for the preceding year and planned agricultural crops and Restricted Use Pesticide applications for the following year.
- d. Record Retention. Keep all Restricted Use Pesticide sale, purchase, application, and dealer records and annual reports in a reasonably accessible electronic format and

available for inspection by the Pesticide Coordinator for a period of at least five years.

Subd.6) Make or maintain false or fraudulent records, invoices, or reports.

Subd.7) Apply or dispense any Pesticide on any Right-Of-Way without prior approval from the Pesticide Coordinator.

Subd. 8) Apply Pesticides where Endangered Species are located.

Subd. 9) Apply a Pesticide in a manner inconsistent with Pesticide Labeling.

Subd.10) Make false or misleading statements during any inspection carried out under this Code.

Subd.11) Sell or apply any Pesticide or mixture of Pesticides that do not have accurate and affixed branding or labeling.

Subd.12) Apply Pesticides in a manner that poses unreasonable negative impacts or health risks, including through exposure from Spray Drift or Volatilization, for Non-Target Organisms, including humans.

Subd.13) Sell or apply any Pesticide that is not Registered with the United States Environmental Protection Agency or whose Registration has been canceled or suspended.

Subd.14) Fail to report, by telephone and email, spills of Pesticides, measuring five or more gallons, to the Pesticide Coordinator within six hours. Email and telephone contact information for the Pesticide Coordinator are available here:  
[https://whiteearth.com/divisions/natural\\_resources/contact](https://whiteearth.com/divisions/natural_resources/contact).

Subd.15) Apply or dispense any Pesticide by aircraft or ground method within one-quarter mile of a School Area unless the following conditions are met:

- a) No school activities are being conducted/ no children or staff are present.
- b) Pesticide Coordinator has been notified and approved the Pesticide application at least forty-eight hours in advance. Notification to Pesticide Coordinator must include a provision for an emergency landing and emergency dispensing of Pesticides or RUPs in a manner which will not endanger persons or property.

Subd. 16) Apply or dispense any Pesticide by aircraft or ground method within one-quarter mile of a Restricted Area without prior approval, at least 48 hours in advance, from the Pesticide Coordinator.

Subd.17) Apply or dispense any Pesticide by aircraft or ground method within one-quarter mile of an operating school bus.

Subd.18) Apply or dispense any Pesticide by aircraft within one-quarter mile or by ground method within three hundred feet of a Body Of Water or Wetland without prior approval, at least 48 hours in advance, from the Pesticide Coordinator. Applications of Pesticides directly to Bodies of Water or Wetlands are prohibited without an approved plan from the Pesticide Coordinator.

Subd. 19) Use water directly from a Body of Water for mixing/loading Pesticides.

Subd. 20) Store empty Pesticide containers at a site within the exterior boundaries of the White Earth Reservation for more than one year unless prior authorization is obtained from the Pesticide Coordinator.

Subd. 21) Fail to notify persons or properly restrict entry of people and livestock into Pesticide-treated areas until the Restricted-entry Interval period associated with the Pesticide has lapsed.

Subd. 22) Apply Pesticides using Chemigation.

Subd. 23) Apply Fertilizer through Chemigation without a permit from the Minnesota Department of Agriculture and an effective Antisiphon Device or Check Valve that prevents backflow of fertilizer into water supplies during irrigation system failure or shut down. Before operation, Antisiphon Devices or Check Valve Devices must be approved by the Pesticide Coordinator.

#### **W.E.E.C. 300.06 Civil Proceedings**

In the event of a violation of this Code, the Pesticide Coordinator may institute civil proceedings in the White Earth Tribal Court against any Person committing violations of the Code for any appropriate remedies, including but not limited to, monetary relief, injunctive relief, seizure and forfeiture, and the posting of bonds or sureties to ensure compliance.

#### **W.E.E.C. 300.07 Civil Administrative Penalties**

Any Person who violates any provision of this Code may be assessed a civil administrative penalty of not more than \$5,000 for each violation. Each day a violation exists constitutes a separate violation.

#### **W.E.E.C. 300.08 Criminal Penalties**

Any enrolled White Earth Band Member who knowingly violates any provision of this Code may be subject to a criminal penalty of not more than \$10,000 per violation. Each day a violation exists constitutes a separate violation.

#### **W.E.E.C. 300.09 Enforcement Actions by the Pesticide Coordinator**

The foregoing shall not be deemed to limit or restrict the Pesticide Coordinator from taking any appropriate administrative or emergency action necessary to protect public health and safety and



natural resources including but not limited to issuance of warning notices, corrective action orders, and stop-sale, use or removal orders.

#### **W.E.E.C. 300.10 Right of Entry**

For the purposes of carrying out this Code, the Pesticide Coordinator may enter premises at reasonable times. Advance notice is not required in cases in which there is a significant threat to human health or natural resources.

#### **W.E.E.C. 300.11 Judicial Review**

Subd. 1) Any Person affected by a notice, order or other final action taken or issued by the Pesticide Coordinator pursuant to this Code may request and shall be granted an evidentiary hearing on the matter before the White Earth Tribal Court. Such person shall file with the Court, a written petition requesting the hearing including name, address, telephone number and a brief statement of the grounds for the hearing. Such petition shall be filed within thirty days of the date a notice, order or other final action is taken or served. Parties to the hearing include the petitioner and the White Earth Department of Natural Resources. Parties may present evidence, cross examine witnesses, and submit post-hearing briefs. A record of oral proceedings shall be made.

Subd. 2) After the hearing, the White Earth Tribal Court shall sustain, modify, or reverse a notice, order or other final action taken by the Pesticide Coordinator based on the evidence provided at the hearing. The decision shall include findings of fact and conclusions of law and shall be issued in writing.

#### **W.E.E.C. 300.12 Effective Date**

This Ordinance shall take effect on the date of passage by the White Earth Reservation Business Committee.

#### **W.E.E.C. 300.13 Severability**

If any provision of this Code is held invalid, the remainder of this Code shall remain in effect.

#### **W.E.E.C. 300.14 Amendments**

This Code may be amended by the White Earth Reservation Business Committee through a duly adopted resolution. Additions to this Code shall become part of the Code thereafter for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization hereof.