

# **W.E.E.C. 300.00 TRIBAL FARM CHEMICAL CODE**

This section of the Environmental Code is known as the Tribal Farm Chemical Code and may be referred to as the Farm Chemical Code and may be abbreviated as T.F.C.C.

## **W.E.E.C. 301.00 Amendments**

The T.F.C.C. may be amended by the Reservation Tribal Council by adopting a resolution stating such changes. 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.

## **W.E.E.C. 302.00 Severability**

If any provision of this code is held invalid, the remainder of this code shall not be affected thereby.

## **W.E.E.C. 303.00 Violation of Code**

The Pesticide Coordinator or an authorized representative of the Tribe, may institute proceedings in the White Earth Tribal Court for any appropriate remedies, including but not limited to, injunctive relief, seizure and forfeiture, and the posting of bonds or sureties to insure compliance, against any person who has violated or failed to comply with any provision of this Code or any regulation, certificate, of order issued pursuant to the Tribal Farm Chemical Code.

## **W.E.E.C. 304.00 Penalties**

### **Civil Penalties:**

Subd.1) In General - any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of amendments of the Tribal Farm Chemical Code may be assessed a civil penalty by the White Earth Court System of not more than \$5,000 for each offense.

Subd.2) Private Applicator - Any private applicator or other person not included in paragraph a) who violates any provision or amendments of the Tribal Farm Chemical Code may be

assessed a civil penalty by the White Earth Tribal Court of not more than \$500 for the first offense nor more than \$1000 for each subsequent offense.

### **Criminal Penalties:**

Subd.1) In General - Any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who knowingly violates any provision of this code may be found guilty by the White Earth Tribal Court of a misdemeanor and shall on conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both.

Subd.2) Private Applicator - Any private applicator or other person not included in paragraph a) who knowingly violates any provision of this code may be found guilty by the White Earth Tribal Court of a misdemeanor and shall on conviction be fined not more than \$1,000, or imprisoned for not more than 30 days, or both.

### **W.E.E.C. 305.00 Authority of the Pesticide Coordinator**

The foregoing shall not be deemed to limit or restrict the Pesticide Coordinator or any duly authorized person(s) from taking other appropriate action, including but not limited to, issuance of cease and desist orders, issuance of stop-sale, stop-use and removal orders, seizure of materials, and giving notification to the representatives of Federal, Tribal, State, county or municipal government agencies.

### **W.E.E.C. 306.00 Court Proceedings**

If it appears that any person violated or failed to comply with any provisions of the Tribal Farm Chemical Code, the White Earth Reservation and/or those duly authorized to act on their behalf may undertake in their name an action in the White Earth Tribal Court.

### **W.E.E.C. 307.00 Jurisdiction**

Subd.1) The applicability of the Tribal Farm Chemical Code shall extend to all persons who produce, distribute, sell, purchase, transport, handle, store, apply or dispose of pesticides on Tribally owned land, or within the exterior boundaries of the reservation.

Subd.2) Any person who enters within the exterior boundaries of the Reservation shall become subject to this code and all rules and regulations and applicable orders of the Pesticide Coordinator, and shall be deemed to have consented to the jurisdiction of the White Earth, and shall be subject to the Civil and or Criminal jurisdiction in White Earth Tribal Court for violation of the Tribal Farm Chemical Code and all applicable rules and regulations and orders of the Pesticide Coordinator.

### **W.E.E.C. 308.00 Judicial Proceeding**

Decisions of the authorized representative of the White Earth Conservation Department shall be subject to review by the White Earth Tribal Court to the extent permitted of authorized by Tribal law.

### **W.E.E.C. 309.00 Sovereign Immunity**

Subd.1) Nothing contained in this code and no action by the authorized representative of the White Earth Tribal Court or its representatives is intended or shall waive, limit or modify the Sovereign Immunity of the White Earth Reservation or any other representative of the White Earth Tribal Council.

Subd.2) There shall be no cause of action against the authorized representative of the White Earth Conservation Department or any other authorized representative thereof for insufficient or negligent acts under the Tribal Farm Chemical Code.

### **W.E.E.C. 310.00 Unlawful Acts**

It shall be unlawful for any person to:

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

Subd.2) Aid, abet or help any person or persons who is committing or attempting to commit any act prohibited by this code.

Subd.3) Disturb, move, damage, obstruct or interfere with any equipment or activities of the White Earth Reservation Pesticide Coordinator or his designated agent.

Subd.4) Sell, purchase, process, transport, handle, store, apply, dispose of or otherwise use a restricted use pesticide within the White Earth Reservation without a duly authorized Minnesota certificate or a duly authorized Minnesota business license (when applicable).

Subd.5) Use any type of restricted use pesticide and not keep required records. The records will include type of application, type of pesticide, and when applied.

Subd.6) Apply or dispense any pesticide upon any right-of-way, unless activity on right of way is followed, and all affected land owners approve.

Subd.7) Apply restricted use pesticide(s) where endangered species are located.

Subd.8) Operate pesticide application equipment in a negligent manner.

Subd.9) Make or maintain false or fraudulent records invoices, or reports.

Subd.10) Apply a pesticide in a manner inconsistent with the labeling registered with U.S. EPA for that pesticide, or in violation of U.S. EPA's or the White Earth Pesticide Coordinator's restrictions on the use of that pesticide.

Subd.11) Refuse or neglect to keep and maintain the records required by this Code or to refuse or neglect to make reports when and as required.

Subd.12) Commit acts of fraud or misrepresentation in making application for applicator certification or renewal of applicator certification or any license or permit required by this Code.

Subd.13) Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certificate, license, permit, regulation, or cease and desist order made pursuant to this code.

Subd.14) Make false or misleading statements during any inspection carried out under this code.

Subd.15) Sell any chemical or mixture or chemicals that do not have proper branding or labeling on or attached to its package.

Subd.16) Make an application which would unreasonably affect non-target organisms.

Subd.17) Sell any pesticide that is not registered or whose registration has been canceled or suspended.

Subd.18) Use any registered pesticide in a manner inconsistent with its labeling.

Subd.19) Sell as a registrant, wholesaler, dealer, or other distributor and fail to keep records of person(s) buying the pesticide(s) and the buyer's certification ID number.

Subd.20) Fail to report any and all spills of pesticides to the White Earth Pesticide Coordinator within (6) six hours of the time of the event.

Subd.21) Violate any provision or regulation of this code.

Subd.22) No person may transport any pesticide by any means over or across a restricted area at any time.

Subd.23) No person may apply or dispense any pesticide by aircraft or ground method within one quarter (1/4) mile of a restricted area unless the following conditions are met:

- a) The Applicator must notify the Pesticide Coordinator (48) forty-eight hours in advance of any proposed application.

- b) The Applicator must include a provision for an emergency landing and emergency dispensing of pesticides which will not endanger persons or property.
- c) The Pesticide Coordinator must not have notified the Applicator that the application is prohibited.

### **W.E.E.C. 311.00 Activities Within the School Area**

Subd.1) No person or persons may apply or dispense any pesticides by aircraft or ground method within one quarter (1/4) mile of a school area unless the following conditions are met:

- a) The school is:
  - 1) On summer vacation break and there are no school activities being conducted;
  - 2) On weekend break and there are no school activities being conducted,  
or
  - 3) Closed for the day; or
- b) An emergency pest situation has been declared, and the procedures in Section **W.E.E.C. 310.10** (Subd. 23) a) through c) of this Code have been followed.

Subd.2) School Buses - No person or persons may apply or dispense any pesticide by aircraft or ground method within five hundred (500) feet of an operating school bus.

### **W.E.E.C. 312.00 Activities Near Bodies of Water**

Subd.1) No person or persons may apply or dispense any pesticide by aircraft or ground method within 300 feet of a body of water, as the term is defined in **W.E.E.C. 102.00** (Subd.24) unless the procedures of **W.E.E.C. 310.00** (Subd. 23) a) through c) of the Tribal Farm Chemical Code have been followed.

Subd.2) No person or persons may apply or dispense any pesticide by aircraft or ground method in such a manner that would cause harm to living organisms, other than the intended target pest, in or around any body of water.

Subd.3) Any application of pesticides directly to the banks of a body of water must be pursuant to a plan approved by the White Earth Pesticide Coordinator.

### **W.E.E.C. 313.00 Activities on Right of Way**

Subd.1) No person or persons may apply or dispense any pesticides within any Right of Way as the term is defined in **W.E.E.C. 102.00** (Subd.171) unless the procedures of **W.E.E.C. 310.00** (Subd. 23) a) through c) of these regulations have been followed. This includes:

- a) Any commercial applicator working with or without County, Township or private approval or request and;
- b) Any Governing Board having the authority to make a decision upon the Right of Way on the White Earth Reservation.

### **W.E.E.C. 314.00 Mixing/Loading or Pesticides**

Subd.1) When mixing or loading Pesticides for application the following conditions must be met.

- a) Applicators shall not use water directly from a body of water for mixing/loading pesticides without prior approval from the White Earth Pesticide Coordinator and/or his representatives. Such approval shall be conditioned on the applicator providing evidence that:
  - 1) A tank or containers separate from any tank or containers used for mixing/loading will be used for receiving water directly from the body of water; and.
  - 2) Separate pumps will be used for pumping the water directly from a body of water and for mixing/loading pesticides.
- b) The applicator at no time shall mix/load pesticides within two hundred (200) feet of a body of water;
- c) The applicator shall not mix or prepare any agricultural material in a manner that is not consistent with its label directions.

Subd.2) When mixing/loading pesticides for use in a chemigation application the place of input into a ditch shall be on the field side of the opening gate of the canal and the location of the containers shall be on the field side of the place of input. All equipment shall be located in a manner not to obstruct the free movement of vehicles along the canal Right of Way.

### **W.E.E.C. 315.00 Storage of Pesticide Containers**

Subd.1) All restricted use pesticide containers shall be stored within designated storage areas.

Subd.2) A person may store or display pesticides and their containers only in the original container and separated from food, feed, seed, livestock remedies, drugs, plants, and other products or materials stored, displayed, or offered for sale in a manner that prevents contamination which would cause injury or damage to the other products or materials

Subd.3) Empty pesticide containers may be stored at a permanent land site for one (1) year after the date of use. Storage periods in excess of one (1) year must be authorized in writing by the White Earth Pesticide Coordinator.

### **W.E.E.C. 316.00 Worker Safety**

Subd.1) No grower shall apply or authorize the application of a pesticide in such a manner as to directly, or through spray drift, expose workers or other persons to the pesticide. The area being treated must be vacated by persons not involved in the application.

Subd.3) No grower shall permit any worker to enter any field treated with pesticides until the reentry period assigned to the pesticide has elapsed.

Subd.4) When a pesticide is applied, no grower shall permit affected crops to be harvested or livestock to graze in an affected field prior to the expiration of interval for reentry stipulated on the label or labeling of the pesticide or pesticides used.

Subd.5) Individuals who are not appropriately certified with the Minnesota Department of Agriculture are prohibited from applying restricted use pesticides within the Reservation boundaries, with exception of those individuals applying the pesticide under the direct supervision of a certified applicator. Direct supervision shall include:

- a) Detailed guidance for applying the pesticide properly and,
- b) Provisions for contacting the certified applicator in the event he is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

### **W.E.E.C. 317.00 Denial, Suspension, Revocation, or Modification of Certificate**

Subd.1) The White Earth Pesticide Coordinator may for good cause shown, informally contact any applicator about possible violations of the Tribal Farm Chemical Code. These informal contacts are to assist the applicators in adhering to practices that promote the proper use of pesticides.

Subd.2) Upon recommendations to the Pesticide Coordinator or, based on his own findings the Pesticide Coordinator may issue a warning of possible violations in the form of a letter from the Pesticide Coordinator to the applicator. The letter will explain the basis for the warning, possible measures which the applicator may take to mitigate the possible violation, and to

prevent future violations, and an explanation of the steps that the Pesticide Coordinator will take if the applicator does not take positive corrective action within a specified time frame.

Subd.3) Whenever the Pesticide Coordinator determines, based upon reasonable information, that an emergency situation exists which may endanger the Reservation environment, wildlife, or human health, he may suspend any of all the pesticide application certificates until a hearing is held to determine whether such applications are endangering the Reservation environment.

### **W.E.E.C. 318.00 Right of Entry**

For the purposes of carrying out this code, the Pesticide Coordinator or his/her designated agent may enter public or private premises at reasonable times by permission or warrant obtained from the appropriate law enforcement authority for sampling, inspection and observational purposes.

### **W.E.E.C. 319.00 Chemigation**

Subd.1) A person may not apply fertilizer through an irrigation system without a chemigation permit from the Minnesota Department of Agriculture.

Subd.2) A chemigation system must be fitted with an effective antisiphon device or check valve that prevents backflow of fertilizer into water supplies or other materials during times of irrigation system failure or equipment shutdown. The devices or valves must be installed between:

- a) The irrigation system pump or water source discharge and the point of pesticide injection.
- b) The point of pesticide injection and the pesticide supply.

Subd.3) The application of pesticides through an irrigation system is prohibited.

### **W.E.E.C. 320.00 Bulk Liquid Fertilizer Storage**

Subd.1) A person may not store up to 6,000 gallons of bulk liquid fertilizer on their own property without a Bulk Liquid Fertilizer Storage permit issued by the White Earth Natural Resources Department.

Subd.2) A person that stores up to 6,000 gallons of bulk liquid fertilizer on their own property is required to have the following items:

- a) A maintained incident response plan
- b) Secondary containment that exceeds the capacity of the largest tank
- c) Tanks that are in proper condition
- d) A sight gauge with stainless steel connections
- e) Stainless steel plugs, connections, and valves