

Memorandum of Understanding
between the
United States Environmental Protection Agency Region 9 Pesticides Office
and the
State of Arizona Department of Agriculture
Regarding the Implementation of a Federal
Pesticide Certification In Navajo Indian Country

**Memorandum of Understanding
between the United States Environmental Protection Agency Region 9 Pesticide
Office and the State of Arizona Department of Agriculture
Regarding the Implementation of the Federal Pesticide Applicator
Certification Program in Navajo Indian Country**

I. PARTIES

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the "MEMORANDUM" or "MOU") between the Pesticide Office of the United States Environmental Protection Agency, Region 9 (hereinafter referred to as "EPA Region 9") and the State of Arizona acting through the Department of Agriculture sets forth the roles of these two parties concerning the implementation of a federal pesticide applicator certification program in Navajo Indian Country.¹ As explained in the "Federal Plan for the Certification of Restricted Use Pesticide Applicators in Navajo Indian Country," EPA Region 9 will implement this program under federal law and the Navajo Nation will continue to cooperate with EPA in the enforcement of the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 136 et seq.

¹ EPA intends to implement this federal certification plan in "Indian Country," as defined in 18 U.S.C. § 1151, that is associated with the Navajo Nation. "Indian Country" is defined in 18 U.S.C. § 1151 as:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

Indian Country associated with the Navajo Nation includes, but is not limited to:

1. Land within the exterior boundaries of the formal Navajo Indian Reservation, including the three satellite Reservations of Alamo, Canoncito and Ramah, but excluding areas of Indian Country associated with the Hopi Tribe; and
2. Lands in the Eastern Navajo Agency that are held in trust by the United States government for the use of the Navajo Nation or for the benefit of individual members of the Navajo Nation or that are dependent Indian communities.

II. STATEMENT OF PURPOSE

Under FIFRA, the Administrator of the United States Environmental Protection Agency (hereinafter referred to as "EPA") has the authority to classify all registered pesticide uses as either "restricted use" or "general use." Restricted use pesticides may only be applied by a certified applicator or someone acting under the direct supervision of a certified applicator. 7 U.S.C. §§ 136a(d)(1)(C)(i), 136j(a)(2)(F).

The certification and training requirements are not self implementing. Rather, a prospective applicator of a restricted use pesticide can only become certified if a certification and training program has been approved by EPA for the area in which he or she seeks to apply the pesticide. Among other things, EPA regulations provide for implementation of certification and training programs in Indian country, in the following ways:

- 1) The tribe may develop its own plan for certifying applicators and submit the plan, through the Department of Interior, to EPA for approval;
- 2) The tribe may choose to utilize a State certification program by entering into an agreement with the State and the cooperating State shall amend the State plan to include the agreement and submit the plan to EPA for approval; or
- 3) EPA may implement a Federal certification and training program where there is no approved plan in effect.

See 40 C.F.R. §§ 171.10, 171.11.

At this time, there is no EPA-approved Navajo Nation pesticide certification plan in effect, nor are there agreements between the Navajo Nation and surrounding states to provide adequate access to certification services for applicators of restricted use pesticides (RUPs) in Navajo Indian Country. In addition, no State has demonstrated jurisdiction to implement a certification plan in Navajo Indian Country. Therefore, while the Navajo Nation will continue to cooperate with EPA Region 9 in the enforcement of FIFRA requirements, including providing pesticide applicators with compliance assistance, EPA Region 9 will implement a federal certification program in Navajo Indian Country. This program is fully described in the attached document entitled, "Federal Plan for the Certification of Restricted Use Pesticide Applicators in Navajo Indian Country." A major aspect of the federal program is the issuance of a federal certificate-based reciprocity, i.e., issuing a certificate to those applicators who already possess a valid certificate from a state or tribe administering an EPA-approved certification plan. EPA expects many such already-certified applicators to be from the surrounding states of Utah and Arizona. For this reason, EPA is entering into this MOU with the State of Arizona.

It is, therefore, the purpose of this Memorandum to identify the roles of the two parties to this MOU (EPA Region 9 and Arizona) as they pertain to the implementation

or participation in the federal certification program.

III. ROLES AND RESPONSIBILITIES

A. EPA REGION 9 WILL, TO THE EXTENT APPROPRIATED FUNDS ARE AVAILABLE:

1. Develop all materials necessary for implementing the federal certification program.
2. Issue federal certificates to applicators qualifying for federal certification in Navajo Indian Country. For those federal certificates that are issued based on a *verified* valid state certificate, EPA will issue such certificates for a period of two years for commercial applicators and three years for private applicators, or until the expiration date of the state certificate on which the federal certificate was based, whichever comes first.
3. Notify the State of Arizona any time EPA initiates a federal certification action (certification, recertification, revocation, suspension, modification etc.) to an applicator whose federal certificate was based on the certificate issued by that state.
4. Develop a database to track federal certifications and re-certifications issued to applicators of RUPs in Navajo Indian Country which are based on state certifications.
5. Where appropriate, take federal enforcement actions for violations of FIFRA, including violations of the federal certification program, consistent with EPA Tribal Enforcement Policy. Notify the State of Arizona if violations and subsequent enforcement actions relate to or affect the status of the federal certification.
6. Provide an annual list of applicators who are currently holding a valid federal certification that were based on certifications issued by the State of Arizona.

B. THE STATE OF ARIZONA WILL:

1. Cooperate with EPA in verifying that an applicant for a federal certificate does in fact have a valid and current certificate issued by the State of Arizona.
2. Notify EPA if the state revokes, suspends or modifies the certificate of any applicator of RUP, within 30 days of the effective date of the change in status of the certificate.

IV. TERMS OF THE MEMORANDUM

A. Provisions

1. Coverage: This Memorandum describes the implementation by EPA of the federal certification of pesticide applicators of RUPS in Navajo Indian Country and the

association of that program with the State of Arizona Department of Agriculture's certification and training program.

2. Cooperation: Each party will cooperate to the greatest extent possible in fulfilling the purpose of this Memorandum.

3. Timely Notification: Each party will act in a timely manner to provide information and documentation necessary to fulfill each party's respective roles and responsibilities (i.e., issuing certificates, verifying applicator certification information, notifying one another regarding actions which affect certification status etc.). When the proposed action of either party may directly affect the activities of the other party, the proponent of such action shall solicit input from the other party.

4. Funding: This MOU is neither a fiscal nor a funds obligation document. Neither party will submit a claim for compensation to the other based on this MOU. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate agreements hereunder that shall be effected in writing by representatives of both parties.

5. Enforcement: EPA Region 9 will have full responsibility for pursuing violations of the federal certification program in Navajo Indian Country, which include the following: application of a RUP without a valid certificate and misusing a RUP. Compliance monitoring and assistance will be conducted by either EPA or the Navajo Nation Environmental Protection Agency under its annual pesticide cooperative agreement. EPA enforcement will be conducted consistent with EPA Tribal Enforcement Policy.

6. Other Agreements: This MOU is a stand-alone document, and does not affect the parties' obligations, agreements or understandings that may exist under other documents.

7. Review: For the first year this MOU will be visited quarterly to assure that it adequately captures the activities necessary to carry out the information sharing required by each party. Thereafter, the progress under the MOU will be reviewed annually.

B. Revisions and Amendments

This MOU may be amended at any time except as limited by applicable regulations or laws. Either party may request and suggest possible revisions or amendments. Any revisions or amendments will be executed in writing and approved by both parties.

C. Written Communication

Written communications pursuant to the provisions of this MOU will be delivered or mailed to the signatories of this MOU.


V. DURATION AND TERMINATION OF UNDERSTANDING

This MOU shall continue in effect until either superseded by a new agreement between the parties, or one of the parties terminates its participation in this MOU. Written notice of termination must be given within 30 days to the other party to this MOU. Such termination, however, shall not relieve any party of responsibilities otherwise prescribed by law or regulation.

This MOU will be automatically terminated at such time as the Navajo Nation has an approved certification plan or the federal certification program in Navajo Indian Country is terminated.

VI. EXECUTION

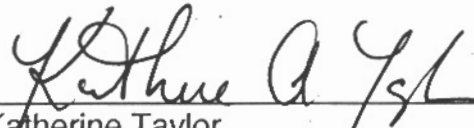
This MOU shall be effective upon date of execution by all parties.



~~Sheldon Jones~~ Jack Peterson
Acting Director
Arizona Department of Agriculture

4/21/03

Date



Katherine Taylor
Associate Director for Agriculture
Cross Media Division
United States Environmental Protection
Agency, Region 9

4/29/03

Date