

Memorandum of Understanding
between the
United States Environmental Protection Agency Region 9
and the
Navajo Nation
Regarding the Cooperative Enforcement of the Federal Pesticide Certification
Program in Navajo Indian Country

**MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 9 AND THE NAVAJO
NATION REGARDING THE COOPERATIVE ENFORCEMENT OF THE FEDERAL
PESTICIDE APPLICATOR CERTIFICATION PROGRAM IN
NAVAJO INDIAN COUNTRY**

I. PARTIES

This MEMORANDUM OF UNDERSTANDING ("Memorandum" or "MOU") between the United States Environmental Protection Agency, Region 9 ("EPA Region 9") and the Navajo Nation sets forth the roles of these two parties concerning the cooperative enforcement 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 The United States Environmental Protection Agency (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 ("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 requirements are not self implementing. Rather, a prospective applicator of a restricted use pesticide can only become certified if a certification 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 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 U.S. Department of the Interior, to EPA for approval;
- 2) The tribe may choose to utilize a state certification program in which case it should enter into a cooperative agreement with the state which shall be incorporated into the state plan and forwarded to EPA for approval; or
- 3) EPA may implement a federal certification 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."

It is, therefore, the purpose of this Memorandum to identify the roles of the two parties to this MOU (EPA Region 9 and the Navajo Nation) in the cooperative enforcement of the federal certification program.

III. ROLES AND RESPONSIBILITIES

A. EPA Region 9 agrees that its Pesticides Office 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.
3. Continue to provide funding, if available, to the Navajo Nation to support cooperative enforcement activities which are identified in this Memorandum and further identified in the Navajo Nation's cooperative agreement workplan for the pesticide program.
4. Develop a database to track federal certifications and re-certifications issued to applicators of RUPs in Navajo Indian Country and provide annually a list of federally certified applicators to Navajo Nation. The list will indicate which of the private applicators were certified using the "non-exam" option.
5. Where appropriate, take federal enforcement actions for violations of FIFRA, including violations of the federal certification program, consistent with applicable EPA policies and guidance.

B. Navajo Nation agrees that its Pesticide Program will, to the extent appropriated funds are available:

1. Identify all RUP applicators operating in Navajo Indian Country and determine their current compliance status. (i.e. Do they hold a current/valid State certification? Are they commercial or private applicators? In what categories do they hold or need certification?)
2. Provide compliance assistance to applicators of RUPs in Navajo Indian Country to facilitate understanding of and assure compliance with federal certification requirements, which may include providing instructions and forms for federal certification.
3. Conduct use inspections including dealer and certified applicator records inspections per agreed upon inspection targets in accordance with the annual pesticide enforcement cooperative agreement workplan.
4. Refer to EPA Region 9 for possible federal enforcement, violations of FIFRA, including requirements of the federal certification program, that are discovered and documented during inspections conducted by Navajo Nation.

IV. TERMS OF THE MEMORANDUM

A. Provisions

1. Coverage: This Memorandum describes the cooperative enforcement activities associated with the implementation by EPA Region 9 of the federal certification of pesticide applicators of RUPs in Navajo Indian Country.
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 (e.g., conducting applicator inspections, exchanging information related to the compliance status of applicators of RUPs). 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. The Navajo Nation's responsibilities under this MOU shall be subject to available funding.
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 Navajo Nation under its annual pesticide enforcement cooperative agreement.
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 reviewed 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 superceded 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.



Joe Shirley, Jr.
President
Navajo Nation



Date



Wayne Natri
Regional Administrator
United States Environmental
Protection Agency, Region 9



Date