Update: Proposed Federal Plan for Certification of Applicators in Indian country



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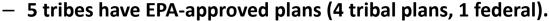
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Background



- Restricted Use Pesticides (RUPs) can only be used by someone who is certified through an EPA approved plan.
- Tribes have 3 options for certifying applicators of RUPs.
 - Develop their own tribal plan;
 - Enter into a written agreement with a state certifying agency, or ;
 - o Develop a Federal Certification Plan.





- This means that in most of Indian country, there is no legal way to certify applicators to apply RUPs.
- If there is no plan in place, EPA cannot take action against an applicator for applying an RUP on tribal land without being certified.
- In 2009, TPPC requested OPP prioritize this issue and establish a way to certify applicators in Indian country.

Review of Key Elements of OPP's Proposed Plan

- 1. Establishes a method for legal use of RUPs in Indian country where no other EPA-approved plan applies.
- 2. Allows EPA to take action if an uncertified applicator applies RUPs in Indian country.
- 3. Certification is issued by EPA for RUP use in Indian country. Federal certification is based on a certification issued by a state with an EPA approved State plan.
- 4. Federal Inspections by EPA or Federally credentialed tribal inspector. Federal enforcement by EPA, if appropriate.
- 5. Tribe may further restrict or prohibit the use of RUPs through implementation of tribal codes, laws or regulations.
- 6. Does not preclude a tribe from developing a Tribal Plan or entering into an MOU with a state later.

Summary of July RTOC

Comments from tribes included:

1. EPA must provide better information and consultation.



- 2. TPPC does not represent the interests of all tribes.
- Tribes must have control over RUP use on their land.
- EPA must recognize other tribal mechanisms to limit or control pesticide use, beyond just codes and ordinances.
- 5. Tribes requested an interactive webinar with OPP.

What has happened since July RTOC

- August Letters submitted to Steve Owens, Assistant Administrator Office of Chemical Safety and Pollution Prevention (OCSPP).
 - Pitt River Tribe
 - Kashia Band of Pomo Indians of the Stewart's Point Rancheria
 - Summit Lake Paiute Tribe

September – Webinar for TPPC

What has happened since July RTOC

October – Revised draft Plan presented to TPPC

NEW: Only certify applicators from contiguous states, with some exceptions.

NEW: Language now includes "tribal codes, laws, regulations <u>or other</u> <u>applicable tribal requirements"</u>

TPPC recommendations.

- 1. Plan must include requirement for applicators to notify tribe of RUP applications.
- 2. OPP should host informational webinar prior to consultation.

OPP response:

- 1. Determine whether agency has legal authority to require notification.
- 2. Considering webinar.

Current Timeline

Fall 2010/early 2011: Tribal Consultation (letters to tribes announcing calls in late November)

2011: Publish first Federal Register notice announcing public comment on draft plan.

2011: Implement final Plan.





Issues

- Should the Plan include an opt-out provision (no RUP use at all)? If so, how?
- Should the Plan allow 'partial' certification (for specific chemicals or categories but not all uses), according to needs to the tribe?
- Should the Plan require applicators to notify a tribe prior to RUP application, if the tribe wants it? If so, how?