

LEECH LAKE BAND

OF

CHIPPEWA INDIANS

PESTICIDE CONTROL ORDINANCE

ORDINANCE NO. 96- 05

LEECH LAKE BAND
OF
CHIPPEWA INDIANS

change format

PESTICIDE CONTROL ORDINANCE

ORDINANCE NO. 95-_____

BE IT ENACTED by the Leech Lake Reservation Tribal Council:

Sec. 1. Title.

This ordinance shall be known as the Pesticide Management Ordinance, or "PMO."

Sec. 2. Findings.

The Leech Lake Reservation Tribal Council finds and declares that:

(1) it is the duly elected governing body of the Leech Lake Band of Chippewa Indians;

(2) it has inherent authority as a sovereign tribal government and also delegated authority under Article VI of the Constitution of the Minnesota Chippewa Tribe, which was adopted pursuant to the Indian Reorganization Act, 25 U.S.C. § 476, *et seq.*, to enact legislation governing the Leech Lake Reservation; and

(3) regulation of pesticides inside the Reservation will help to protect the natural environment and health, safety and general welfare of all residents of the Reservation.

Sec. 3. Purpose and Scope.

In order to protect animals, aquatic life, the environment and human health, safety and welfare, and to minimize hazards caused by pesticides, this ordinance regulates the production, sale, purchase, transportation, handling, storage, application, release, disposal and other use or introduction of pesticides by any person on any land, water, or air in the Leech Lake Indian Reservation.

Sec. 4. Definitions. The terms defined in this section shall have the following meaning whenever used in this ordinance unless the context requires otherwise.

Subd. 1. "Aerial application" means an application made by aircraft to the ground.

Subd. 2. "Animals" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish and shellfish.

Subd. 3. "Agricultural commodity" means any plant or part thereof, or animal product produced by a person or persons for sale, consumption, propagation or other use.

Subd. 4. "Application" means the distribution of any pesticides or combination of pesticides for the purpose of preventing, destroying or regulating any pest.

Subd. 5. "Aquatic life" means animal and plant or other life that resides in water at some stage in its life history.

Subd. 6. "Certified applicator" means any individual who is certified under the Federal Insecticide Fungicide and Rodenticide Act as authorized to use or supervise the use of any pesticide which is classified for restricted use. The term includes private and commercial applicators.

(a) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for the purpose of producing any agricultural commodity on property, owned or rented by him or his employer or is applied without compensation (other than trading or personal services between producers of agricultural commodities) on the property of another person.

(b) "Commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purposes or on any property other than as provided by paragraph (a) of this subdivision.

Subd. 7. "Empty pesticide container" means any pesticide container from which the pesticide has been substantially removed or drained whether intentionally or unintentionally.

Subd. 8. "Endangered species" means those plants or animals declared to be an endangered species by the Federal Government.

Subd. 9. "Director" means the Director of the Division of Resource Management of the Leech Lake Reservation Tribal Council.

Subd. 10. "EPA" means the United States Environmental Protection Agency.

Subd. 11. "Environment" means water, air, and land and the interrelationship which exists between them.

Subd. 12. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act of June 25, 1947, *as amended*, 7 U.S.C., ch. 6.

Subd. 13. "Ground application" means applications made by use of a tractor, motorized equipment, backpack or other method used to apply pesticides from the ground to the ground.

Subd. 14. "Hazard" means the probability that a given pesticide will have an adverse effect on human health or the environment in a specific situation, the relative likelihood of danger or ill effects being dependent on the interrelated factors present at any given time and location.

Subd. 15. "Label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers.

Subd. 16. "Labelling" means all labels and all other written materials, printed or graphic matter accompanying the pesticides or device, and references to the label or literature accompanying the pesticide or device, except to current official publications of the EPA, the U.S. Department of Agriculture and the Department of the Interior, the Department of Health, Education and Welfare, State Experiment Stations, State Agricultural Colleges and similar federal and state institutions or agencies authorized by law to conduct research in the field of pesticides.

Subd. 17. "Land" means all land, water, and permanent structures within the Reservation, regardless of the issuance of any patent, including rights-of-way running through the Reservation.

Subd. 18. "Leech Lake Band Pesticide License" means a General Pesticide License or a Pesticide Applicator License.

Subd. 19. "Non-target organism" means a plant or animal other than the one against which the pesticide is applied.

Subd. 20. "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not, including a person acting in a fiduciary or representative capacity, and further including any government agency.

Subd. 21. "Pest" means (1) any insect, rodent, nematode, fungus, weed;(2) any other form of terrestrial or aquatic plant or animal life or various, bacteria, or other micro-organisms (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which are in an area where they are not wanted; or (3) any other organism declared to be a pest by the Leech Lake Reservation Tribal Council.

Subd. 22. "Pesticide" means (1) any substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, causing the leaves or foliage to drop from a plant, or artificially accelerate the drying of plant tissue, or accelerating or retarding

the rate of growth or maturation or otherwise altering the behavior of plants or the product thereof.

Subd. 23. "Pesticide container" means any can, barrel, bottle, tank or other receptacle in which a pesticide is stored, held or transported.

Subd. 24. "PMO" means the Pesticide Management Ordinance.

Subd. 25. "Records" means written, electronic or printed documentation of all applications of pesticide, including location, date, time, amount per acre, wind speed and direction, and other similar information.

Subd. 26. "Reservation" means the Leech Lake Indian Reservation as established by the Treaties of 1855, 1864 and 1867 and the Executive Orders of October 29 and November 4, 1873 and May 26, 1874 and described specifically in an unpublished judgment in Leech Lake v. Herbst, Nos. 3-69 Civ. 64 and 3-70 Civ. 228 (U.S. Dist. Ct., Dist. of Minn., June 18, 1973).

Subd. 27. "Restricted areas" means all of the following and all areas within a radius of $\frac{1}{4}$ of a mile therefrom:

- (1) schools;
- (2) public buildings;
- (3) all rights-of-way;
- (4) wildlife management areas and refuges;
- (5) wetlands;
- (6) waters of the reservation; and
- (7) areas where an endangered, threatened or culturally significant species is located.

Subd. 28. "Right-of-way" means any area two rods on either side of the center-line of a public road, railway, electric power lines, pipelines and other similar areas.

Subd. 29. "Restricted use pesticide" means any pesticide classified for restricted use by the Minnesota Department of Agriculture, the EPA, or the Director.

Subd. 30. "Tribal Court" means any court duly established by the Leech Lake Reservation Tribal Council which has original jurisdiction over a violation of the PMO.

Subd. 31. "Waters of the Reservation" means all accumulations of surface water and ground water, whether natural or artificial, or public or private, and any parts thereof, to the extent they are within or flow through the Leech Lake Reservation; provided that the term does not include any pond, reservoir or facility built for reduction, treatment or control of pollution or cooling of water prior to discharge. The term includes, but is not limited to, wetlands.

Subd. 32. "Wetlands" means areas that are inundated and 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 (hydric) soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.

Subd. 33. "Work plan" means a written document stating the target organism, application rate, amount, and method of application and location of the proposed pesticide use for the project.

Sec. 5. Leech Lake Pesticide Program.

Subd. 1. Organization; Responsibility. The Leech Lake Reservation Tribal Council hereby establishes the Leech Lake Pesticide Program within its Division of Resource Management. The Director shall be responsible for implementing and enforcing the PMO.

Subd. 2. Authority. As he may deem necessary to carry out the purpose and intent of the PMO, the Director may:

- (1) designate restricted use pesticides;
- (2) restrict, regulate or prohibit the sale, purchase, production, processing, transportation, handling, storage, application, disposal or other use of pesticides within the Reservation;
- (3) require, restrict, regulate or prohibit the use of designated facilities, equipment, materials and methods for the purchase, sale, production, processing, transportation, handling, storage, application, disposal or other use of pesticides within the Reservation;
- (4) enter in a lawful manner any public or private premises within the Reservation to observe or inspect any stores of pesticides; and any apparatus, aircraft, vehicle, equipment, supplies, material, storage and handling areas and facilities, disposal sites and devices which are used or intended for use in the production, processing, transportation, handling, storage, application, disposal or other use of pesticides;
- (5) restrict, regulate or prohibit the production, processing, transportation, handling, storage, application, and disposal or other use of pesticides in the

reservation on a basis of time, geographic area or other relevant circumstance or condition;

(6) issue or approve permits, licenses or work plans for production, processing, sale, distribution, transportation, storage, application, disposal or use of pesticides within reservation;

(7) adopt by reference laws, rules, regulations, orders, or other requirements prescribed by the United States or by the State of Minnesota with respect to pesticides;

(8) issue administrative orders and take other enforcement actions as provided in Section 11 of the PMO;

(9) obtain advice and assistance from federal, tribal, state, county and municipal government agencies, and private agencies, and persons with technical expertise with respect to the adoption and implementation of the Leech Lake Pesticide Program; coordinate activities and cooperate with other governmental agencies having similar responsibilities within their respective jurisdictions; and to utilize the Tribal Court to enforce the PMO and any rules, regulations and orders adopted pursuant thereto;

(10) enter into agreements with federal, state, and local governments and with private organizations as appropriate to provide coordination, cooperation and assistance, including but not limited to financial assistance, in achieving the purposes of the PMO.

(11) delegate program administrative responsibility and authority to a Pesticide Coordinator and designate other authorized representatives of the Pesticide Program to conduct inspections, observations, inquiries, and enforcement of the PMO;

(12) make such reports to the Administrator of the EPA in a manner and containing such information as the Administrator may, from time to time require; and

(13) regularly monitor the development, production, transportation, storage, handling, use, impacts and disposal of restricted use pesticides.

Sec. 6. Licensing and Record Keeping.

Subd. 1. Leech Lake Pesticide Licenses.

(a) General Pesticide License. No person shall produce, store, process, transport, distribute, handle, sell, dispose of any restricted use pesticide within the Reservation, or offer to do any of the foregoing, without a Leech Lake Band General Pesticide License.

(b) Pesticide Applicator License. No person who would be considered a "certified applicator," "commercial applicator" or "private applicator" of restricted pesticides under FIFRA or the PMO shall apply or supervise the application of any restricted use pesticide

within reservation without a current Leech Lake Band Pesticide Applicator License.

(c) Applications. Application for a Leech Lake Band pesticide license or permit shall be in such form as is prescribed by the Director.

(d) Issuance. Issuance of the Leech Lake Band pesticide license shall be issued only if the applicant (1) is competent to perform the licensed activities; (2) is familiar with their nature and characteristics, and the dangers which may result from their application, use and handling; (3) is knowledgeable about, and able and willing to take appropriate precautions to protect the public health, safety and welfare; (4) has suitable equipment, in safe and proper operating condition, for application or other use, with trained, reliable and responsible operators, as appropriate; and (5) has not demonstrated lack of responsibility in prior processing, transportation, handling, storage, application, disposal or other usage of restricted use pesticides within the Reservation or elsewhere.

The demonstration or other satisfaction of the foregoing requirements may be by oral or written examination, completion of training course, actual field operation, questionnaires or reports from other persons, reliance upon federal and state certifications and licenses, or any combination of the foregoing.

(e) Qualification, Conditions and Restrictions. Any Leech Lake Band pesticide license issued may be subject to any reasonable qualifications, conditions, restrictions and limitations deemed appropriate by the Director.

(f) Financial Responsibility. Before issuing a Leech Lake Band pesticide license, the Director shall require proof that the applicant has currently in force liability insurance protecting persons who may suffer death, injury, illness or property damage as a result of actions taken under the license. The Director shall accept liability insurance only from companies authorized to do business in the State of Minnesota. The insurance shall be in an amount specified by the Director and shall include coverage for property damage, personal injury or illness, death, and public liability, each separate. The insurance shall be maintained in not less than the specified sum at all times during the licensing period. The insurance shall be written in a form acceptable to the Director and shall be evidenced by certificates delivered to the Director. Each policy shall require written notice to the Director at least ten (10) days before any cancellation or change thereof. The Director shall suspend the license of any licensee who fails, at any time, to satisfy the insurance requirements. The Director may increase the amount of required insurance at any time upon fifteen (15) days notice to the licensee.

(g) Term. A Leech Lake pesticide license may be issued by the Director for a period not to exceed twelve (12) months from the date of approval of the license by the Director. It may be renewed annually upon application to the Director and satisfaction of all qualifications and prerequisites therefor.

(h) Fees. A fee shall be charged for the issuance and each annual renewal of a Leech Lake Band pesticide license, and an additional fee shall be charged for the reactivation of any license that is suspended for any reason. The Director shall establish by rule or order a fee schedule and may revise it from time to time. All such fees shall be submitted to the Band through the Director, with checks made payable to the Leech Lake Reservation Tribal Council.

(i) Additional Requirements. The Director may alter, modify, or increase the requirements, conditions, restrictions or limitations imposed on any license or permit issued pursuant to the PMO, as may be reasonable and necessary to protect the public health, safety, welfare and the integrity of the environment.

Subd. 2. Records and Reports. Each person who applies pesticides pursuant to a Leech Lake Band Pesticide Applicator License shall keep a record of each property treated and, upon request by the Director, shall furnish copies of such records to the Director. Such records shall be kept by such persons for a period of two years, unless a longer period is specified by the Director, and shall contain the name and address of the owner of the property and the exact location of the property treated; the crop treated; the pest or pests involved; the name, type and strength of the pesticide used; a description of the method by which such pesticide was applied; the name and address of the person or firm where the pesticide was purchased; the name and address of the person applying the pesticide; the date, month, year and time of the day of application; the direction and estimated velocity of the wind at the time of the application and a description of the principal equipment used therefore; the name and address of the person who disposed of the pesticide containers, the type of container and the manner and location in which the containers were disposed of.

Sec. 7. Registration of Pesticides.

No person shall produce, process, distribute, sell, purchase, deliver, transport, receive, store, apply or otherwise use any pesticide within the Reservation, or offer to do any of the foregoing, unless that pesticide is properly and currently registered pursuant to FIFRA; provided that if an unregistered pesticide is subject to an experimental use permit issued pursuant to FIFRA, the Director may authorize its experimental use by the permittee within the Reservation in strict compliance with the terms of the permit and such additional restrictions or requirements as he may impose.

Sec. 8. Use of Pesticides.

Subd. 1. Transportation. All transportation of pesticides within the Reservation shall comply with the requirements of this subdivision.

(a) Transportation routes shall be selected so as to minimize the impact of a potential spills on waters of the Reservation;

(b) All containers shall be inspected prior to loading in order to ensure that all caps, plugs and bungs are tightened and there are no leaks;

(c) No restricted use pesticide shall be transported by boat or aircraft across water bodies.

Subd. 2. Storage. All storage of pesticides inside the Reservation, except for storage incidental to the year around or seasonal use of property for residential purposes, shall comply with the requirements of this subdivision.

(a) All pesticides shall be stored within designated storage areas within buildings. Storage areas shall have floors constructed of concrete or other impermeable materials and shall have drains or sills with sumps large enough to contain the contents of the largest container stored therein. Storage areas shall not be located within 500 feet of a well, wetland or water body. Storage areas shall be locked at all times to avoid misuse or vandalism.

(b) All empty pesticide containers must be washed prior to storage.

(c) All empty pesticide containers shall be triple rinsed prior to storage.

(d) Empty pesticide containers may be stored at a permanent land site for up to one year after the date of use. No empty pesticide containers shall be stored within the Reservation for longer than one year unless authorized in writing by the Director.

Subd. 3. Mixing and Loading Operations. All mixing and loading of pesticides within the Reservation shall comply with the requirements of this subdivision.

(a) The label shall be reviewed before opening the container, and all label directions shall be strictly followed during all phases of mixing and loading.

(b) Neither mixing nor loading may be carried in a restricted area.

(c) Hoses used to fill pesticide application equipment shall be stored and transported in a manner that prevents direct contact with pesticides, gasoline, oils or surfaces on which the substances have been spilled.

(d) Pesticides shall not be introduced into mixing or application equipment until after filling the equipment from a water source.

(e) Pesticides shall not be mixed or loaded with water directly from a water body.

(f) Pour caps shall be replaced and bags or other containers shall be closed immediately after use.

- (g) Spray and mix tanks shall not be left unattended while being filled.
- (h) An air gap shall be provided between the water source and the mixture surface so as to prevent backsiphoning.
- (i) Pesticide mixing or application equipment shall not be filled directly from a public water supply unless the outlet from the water supply is equipped with a backflow device.

Subd. 4. Application of Pesticides. All applications of pesticides inside the Reservation shall comply with the requirements of this subdivision.

- (a) The label directions shall be reviewed prior to application and shall be strictly adhered to during application.
- (b) Records of application shall be maintained as specified in Section 6, subdivision 2.
- (c) All application equipment shall be inspected prior to use taking particular care to check for leaking hoses, connections, and plugged or worn nozzles.
- (d) Spray equipment shall be calibrated prior to use so as to achieve uniform distribution and rate.
- (e) Treatment areas shall be clearly marked and identified.
- (f) Equipment shall produce the appropriate rate and lowest reasonable pressure for the chemical being applied.
- (g) Pesticides shall not be applied if the likelihood of drift exists, and a drift control agent shall be used as necessary.
- (h) Application shall be made only under the wind, temperature and humidity conditions recommended on the pesticide label.
- (i) No pesticide shall be applied within fifty (50) feet of an operating school bus.

Subd. 5. Equipment Clean-up. All equipment used to handle, transport, store, or apply pesticides inside the Reservation shall be cleaned as required by this subdivision.

- (a) Pesticide residues shall not be disposed of within a restricted area as defined in Section 4, Subdivision 27.

(b) All equipment shall be thoroughly cleaned after each use, including but not limited to rinsing the mixing apparatus at least three times.

Subd. 6. Container and Waste Disposal. All pesticide wastes and containers shall be disposed of according to the product label.

Subd. 7. Responding to Spills. Any person who spills one (1) gallon or more of a pesticide or observes or otherwise becomes aware of such a spill shall contact the Director within 2 hours of becoming aware of the spill. If the spill occurs during the weekend or after normal business hours such person shall contact the Minnesota Duty Officer at (800)422-0798 where phones are answered 24 hours every day.

Sec. 9. Applications Within Restricted Areas.

Subd. 1. The Provisions of this section shall apply to all applications of restricted pesticides regardless of land use and all applications of other pesticides except applications on property currently being used for year around or seasonal residential purposes.

Subd. 2. Applications Prohibited. No person shall apply restricted use pesticides in a restricted area as defined in Section 4, subdivision 27 unless (1) the applicator has submitted a work plan to the Director stating the type, amount, rate, target organism, location and method of application of the pesticide intended for the project; and (2) the Director has approved the work plan. The work plan shall be submitted at least two business days in advance of the proposed application. If the Director fails to respond within two business days of submission, the work plan shall be deemed to have been approved.

Subd. 3. Special Requirements. Applications within 500 feet of a school may be made only when:

- (1) the school is on summer break, and there are no activities being conducted;
- (2) the school is on weekend break, and there are no activities being conducted or;
- (3) the school is closed for the day.

Subd. 4. Right-of-Way Applications. The applicator must notify all households within one-quarter ($\frac{1}{4}$) mile of any right-of-way proposed to be treated with pesticides and receive written statements of approval, prior to submitting a workplan to the Director for approval pursuant to subdivision 2 of this section.

Sec. 10. Prohibited Acts. In addition to prohibitions set forth elsewhere in the PMO, no person shall:

- (1) violate any provision of the PMO or rule or order issued pursuant thereto;
- (2) interfere with the lawful enforcement of the PMO;
- (3) aid, abet or help any person who is committing or attempting to commit any act prohibited by the PMO;
- (4) distribute, move, damage, obstruct or interfere with any equipment or activities of the Leech Lake Pesticide Program or its duly authorized personnel;
- (5) operate defective pesticide application equipment;
- (6) operate pesticide application equipment negligently;
- (7) apply a pesticide in a manner inconsistent with the labeling registered with the U.S. EPA for that pesticide, or in violation of U.S. EPA or the Director's restrictions on the use of that pesticide;
- (8) make false or misleading statements during any inspections carried out under the PMO or in any application, plan or report required by the PMO;
- (9) sell any pesticide that does not have proper branding or labeling attached to its package;
- (10) make an application which would unreasonably affect a non-target organism;
- (11) sell any pesticide that is not registered or whose registration has been cancelled or suspended;
- (12) fail to report any and all spills or pesticides to the Director within two (2) hours of the time of the event;
- (13) make any aerial application of a pesticide within the Reservation.

Sec. 11. Enforcement.

Subd. 1. Remedies Available. The provisions of the PMO may be enforced by any one, or a combination, of the administrative and judicial remedies contained in this section.

Subd. 2. Administrative Order; Issuance and Appeal. The Director may issue an administrative order directing any person whom the Director finds to be in violation of the PMO or any rule or order promulgated thereunder to cease and desist such violation and take such action as he may deem necessary to mitigate any damage caused by the violation to persons, property or the environment. Any person to whom an administrative order is issued may appeal to the Tribal Court. Appeals shall be in writing and shall be filed within thirty (30) days after issuance of the order.

Subd. 3. Revocation or Suspension of Leech Lake Pesticide License; Authority and Appeals. The Director may revoke or suspend any Leech Lake pesticide license if he finds that the licensee has violated the PMO or any rule or order issued thereunder; or any certificate, license or permit issued to the licensee pursuant to FIFRA. Revocations and suspensions shall be in writing and shall state the reasons therefore. Any person whose license is revoked or suspended may appeal such action to the Tribal Court in the manner described in subdivision 2 of this section.

Subd. 4. Civil Penalties. The Tribal Court, in a civil action brought in the name of the Band by the Director, a Leech Lake Conservation Officer or other duly authorized agent of the Band, may levy a civil penalty for violations of the PMO or any rule or order issued thereunder as provided in this subdivision.

(a) Any holder of a Leech Lake Band pesticide license or any person who is required to have such a license may be required to forfeit and pay to the Band a civil penalty, in an amount to be determined by the Court, of not more than \$5000 for each offense.

(b) Any person other than a licensee or person required to have a license as described in paragraph (a) of this subdivision may be required to forfeit and pay to the Band a civil penalty if not more than \$1500 for a first offense and not more than \$5000 for each subsequent offense.

Subd. 5. Injunctions. Violations of any provision of the PMO or any rule or order issued thereunder may be enjoined by the Tribal Court in an action brought by the Director in the name of the Band.

Subd. 6. Actions to Compel Performance.

(a) The Director may bring an action in the name of the Band in Tribal Court to seek an order to compel performance of any administrative order issued pursuant to subdivision 2 of this section or compliance with the provisions of the PMO or any rule issued thereunder.

(b) In any such action the Tribal Court may require any defendant adjudged responsible to do and perform any and all actions necessary, which are reasonable and within the defendant's power, to accomplish the purposes of the PMO or any rule or order

issued thereunder.

Sec. 12. Severability.

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

Sec. 13. Preservation of Sovereign Immunity.

Nothing in the PMO shall be constructed as waiving, in whole or in part, the sovereign immunity from suit of the Band or its officials, agents or employees, except for appeals of actions of the Director pursuant to Section 11, Subd. 2 and 3 of the PMO.

Sec. 14 Effective Date.

This ordinance shall become effective on June 1, 1996.

We certify that the foregoing Pesticide Management Ordinance Number 96-05 was duly adopted by the Leech Lake Reservation Tribal Council at a SPECIAL meeting thereof held in Cass Lake, Minnesota on May 24, 1996.



Myron F. Ellis, Acting Chairman



Daniel Brown, Secretary/Treasurer