

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



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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 ;
 - Develop a Federal Certification Plan.
- **5 tribes have EPA-approved plans (4 tribal plans, 1 federal).**
- **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.**
- 3. Tribes must have control over RUP use on their land.**
- 4. 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 or other applicable tribal requirements”

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?**