

**BLUE LAKE RANCHERIA
PESTICIDE CONTROL ORDINANCE**

05-2000

The Business Council of the Blue Lake Rancheria, empowered by the Tribal Constitution to enact ordinances, hereby ordains the following:

§1. Purpose

The Business Council finds and declares as follows:

- (a) The economic welfare of the Blue Lake Rancheria, its members, and others residing or working within the Blue Lake Rancheria, is, in part, dependent upon agricultural and non-agricultural use and development of lands within the Rancheria;
- (b) Maximum benefit from such use and development may require application of various pesticides within the Blue Lake Rancheria;
- (c) Use of pesticides may be required periodically for maintenance of healthful conditions within the Blue Lake Rancheria; and
- (d) Uncontrolled and improper use of pesticides on the Blue Lake Rancheria poses a serious threat to the health and welfare of Tribal members and non-members living on, or passing through, the Blue Lake Rancheria.

Therefore, the Blue Lake Rancheria adopts this Ordinance to protect the health and welfare of all persons living on, or passing through, the Blue Lake Rancheria.

§2. Definitions

For the purposes of this ordinance, the following words shall have the following meanings:

- (a) The term "Administrator" means the administrator of the U.S. Environmental Protection Agency.
- (b) The term "agricultural commodity" means any plant or part thereof, animal, or animal product, produced by a person (including but not limited to farmers, ranchers, growers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, agriculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use.
- (c) The term "applicator" means any person who applies pesticides to land and buildings or other structures, and shall be further categorized as follows:
 - (1) "permitted applicator" means any person who receives a Pesticide Use Permit from the Tribal EPA to use or supervise the use of pesticides.

- (2) "commercial applicator" means an applicator who is certified by the State of California to use or supervise the use of any pesticide for any purpose or on any property, including residential, business or other structures, other than as provided in paragraph (3) of this sub-section, including any person applying pesticides for a commercial purpose.
- (A) This definition includes those pesticide applicators defined by the State as structural pest control applicators.
- (3) "private applicator" means an applicator who is certified by the State of California to use or supervise the use of any restricted use pesticides for the purpose of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- (d) The term "Business Council" means the Business Council of the Blue Lake Rancheria.
- (e) The term "complainant" means any tribal member, Business Council member, Tribal EPA staff, other staff of the Tribe, or residents of the Rancheria who submit to the Tribal EPA a written complaint, signed under penalty of perjury, of a violation of this Ordinance, any rules or regulations promulgated pursuant thereto, or any conditions of a Pesticide Use Permit, in accordance with the procedures set out in section 15, below.
- (f) The term "EPA" means the U.S. Environmental Protection Agency.
- (g) The term "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.
- (h) The term "grower" means any person(s) in possession of real property for the purpose of producing agricultural commodities and who uses such land to produce agricultural commodities, including land that lays fallow from time to time.
- (i) The term "label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- (j) The term "labeling" means all labels and all other written material, printed or graphic matter
- (1) accompanying the pesticide or device at any time; or
 - (2) to which reference is made on the label or in literature accompanying or referring to the pesticide or device, except when accurate, non-misleading references are made to current official publications of the EPA, the U.S. Departments of Agricultural and Interior, the U.S. 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 pesticide.
- (k) The term "land" means all land and water areas, including airspace, and all plants, animals, structures, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation, within the Rancheria or other territory over

which the Tribe has jurisdiction.

- (l) The term "person" means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, federal, tribal, state, county, city, or district government, or other political subdivision thereof, or any other group or combination acting as a unit whether incorporated or not, including a person acting in fiduciary or representative capacity.
- (m) The term "pest" means:
 - (1) any insect, rodent, nematode, fungus, weed, or
 - (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living humans or other living animals) which the Administrator declares to be a pest under FIFRA or which are located in an area when and where they are not wanted.
- (n) The term "pesticide" means :
 - (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and/or
 - (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 and artificially accelerating 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,except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of section 321(w) of Title 21.
- (o) The term "Pesticide Use Permit" means the permit issued by the Tribal Environmental Protection Agency for the use, by a commercial or private applicator, of pesticide(s) on the Rancheria or other territory over which the Tribe has jurisdiction.
- (p) The term "Rancheria" means all land, air, and water located within the exterior boundaries of the Blue Lake Rancheria.
- (q) The term "regulated activity" means activities involving the use of a pesticide, including but not limited to transporting, handling, storage, and application thereof occurring within the Rancheria or other territory over which the Tribe has jurisdiction which activities are subject to regulation pursuant to this Ordinance or any rules and regulations promulgated pursuant hereto.
- (r) The term "restricted use pesticide" means any pesticide formulation which is classified for "restricted use" by the U.S. Environmental Protection Agency, the State of California, or the Tribal Environmental Protection Agency.
- (s) The term "State" means the State of California or any administrative agency thereof.

- (t) The term "Tribal EPA" means the Tribal Environmental Protection Agency of the Blue Lake Rancheria.
- (u) The term "Tribe" means the Blue Lake Rancheria, a federally recognized Indian tribe.
- (v) The term "unreasonable adverse effect(s) on the environment" means any unreasonable actual harm or risk of harm to humans or the environment, taking into account the economic, social, historical, cultural, and environmental costs and benefits associated with the use of any pesticide.
- (w) The term "violation" means any violation of this Ordinance, any rules or regulations promulgated pursuant thereto, any orders of the Tribal EPA carrying out this Ordinance, or any conditions of a Pesticide Use Permit.
- (x) The term "violation" means any person who the Tribal EPA finds has committed a violation.
 - (1) The term "alleged violator" means any person alleged to have committed a violation.
- (y) The term "weed" means any plant that grows when and where not wanted.

§3. Jurisdiction

- (a) The applicability of this Ordinance shall extend to all persons who use, transport, handle, store, apply or dispose of pesticides within the Rancheria or other territory over which the Tribe has jurisdiction.
- (b) Any person who enters onto the Rancheria or other territory over which the Tribe has jurisdiction shall become subject to this Ordinance and shall be deemed to have consented to the jurisdiction of the Tribe and to be bound by the lawful enactments of the Tribe.

§4. Pesticide Use Permit

- (a) Any person who is a commercial applicator of pesticides must first obtain a Pesticide Use Permit before transporting, handling, storing and/or spraying any pesticide within the Rancheria or other territory over which the Tribe has jurisdiction.
- (b) Any person who is a private applicator of restricted use pesticides must first obtain a Pesticide Use Permit from the Tribal EPA before transporting, handling, storing and/or spraying any restricted use pesticide within the Rancheria or other territory over which the Tribe has jurisdiction.
- (c) The following persons are not required to obtain a Pesticide Use Permit:
 - (1) Persons using pesticides, which are not classified as "restricted use pesticides", in or around their own residences whether owned or rented; and
 - (2) Competent persons applying pesticides under the direct supervision of a commercial

applicator, or applying restricted use pesticides under the direct supervision of a private applicator, where the commercial or private applicator holds the relevant, valid State pesticide applicator certification or license and Pesticide Use Permit for such activities, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide.

(A) A pesticide is considered to be applied under the direct supervision of a certified and permitted commercial or private applicator if it is applied by a competent person acting under the instructions and control of a certified and permitted commercial or private applicator who immediately available if and when needed.

(d) A Pesticide Use Permit, or a renewal thereof, is obtained by submitting an application therefore, on any form prescribed by the Tribal EPA for this purpose, along with appropriate documentation, to the Tribal EPA, which shall collect the following information from applicants:

(1) the applicant's principal office, place of business, or residence;

(2) the identity of individuals who shall engage in transporting, handling, storing and/or spraying of a pesticide in the case of commercial applicators, or a restricted use pesticide in the case of private applicators, on the Rancheria or other territory over which the Tribe has jurisdiction;

(3) proof of valid documentation as follows:

(A) commercial applicators must submit proof of a valid Qualified Applicator License (if the owner of a pest control business) or Qualified Applicator Certificate (if an employee of a pest control business or authorized governmental agency) and a Pest Control Business License (noting whether the person is an owner or employee of the pest control business) issued by the State, or, if appropriate, a structural pest control certificate and licensing documentation issued by the State; or

(B) private applicators of restricted use pesticides must submit proof of a restricted materials certificate issued by the State;

(4) proof of financial responsibility protecting persons, and those claiming under them, who may suffer death, injury, illness or property damages as a result of the operations of the applicant, which may be satisfied by supplying proof of liability insurance by a company licensed and authorized to do business in the State of California; and

(5) any other information deemed relevant and appropriate by the Tribal EPA.

(e) Based on the information provided in the application, the Tribal EPA shall conduct an inquiry on:

(1) the applicant's history as an applicator;

(2) whether the applicant's California applicator certification has ever been revoked or suspended; and

(3) whether the applicant is currently the subject of any disciplinary review or action for violations of his/her California applicator certification requirements.

- (f) Any Pesticide Use Permit issued by the Tribal EPA must conform to the following requirements.
- (1) The Tribal EPA shall issue a Pesticide Use Permit only to applicants --
 - (A) who present proof of the relevant, valid certificates and licenses as described in sub-section (d) above; and
 - (B) who have not been the subject of any past or current disciplinary review or action regarding a pesticide applicator certificate or license that the Tribal EPA determines, in its discretion, indicates the applicant could pose a threat to the health and safety of the residents and environment of the Rancheria and other territory over which the Tribe has jurisdiction.
 - (2) The Pesticide Use Permit shall only be valid for those categories of pesticide application listed on the State applicator certificates and licenses submitted to the Tribal EPA in accordance with sub-section (d) above.
 - (3) The expiration date on the Pesticide Use Permit shall not exceed the expiration date printed on the State certification documented presented to the Tribal EPA, or one year from the date of issuance of the Pesticide Use Permit.
 - (4) The Tribal EPA may include any condition(s) in the Pesticide Use Permit that it deems necessary to protect the health and safety of the residents and environment of the Rancheria and other territory over which the Tribe has jurisdiction.
 - (5) Commercial and private applicators must renew any required Pesticide Use Permit each calendar year, or upon expiration of the previously issued Pesticide Use Permit.
- (g) A fee of \$10.00 each calendar year will be charged for a Pesticide Use Permit.
- (1) Tribal members and Tribal entities are exempt from Pesticide Use Permit fees, but are not exempt from obtaining Pesticide Use Permits.
 - (2) The Tribal EPA may waive the permit fee where, in its discretion, it will further the interests of justice and fairness.

§5. Prohibited Applications

- (a) Individuals not appropriately certified by the State are prohibited from applying or using any restricted use pesticides, with the exception of those individuals applying restricted use pesticides under the direct supervision of a certified applicator.
- (b) No commercial applicator of pesticides shall use, transport, handle, store, spray, or supervise the use of any pesticide within the Rancheria or other territory over which the Tribe has jurisdiction without the relevant, valid applicator certification or license documentation issued by the State and a tribally-issued Pesticide Use Permit.
- (c) No commercial applicator shall apply any pesticide within the Rancheria or other territory over which the Tribe has jurisdiction without first filing with the Tribal EPA a notice of intent to apply pesticides for a commercial purpose one business day before applying said pesticides.

- (d) No private applicator of restricted use pesticides shall use, transport, handle, store, spray, or supervise the use of any restricted use pesticide within the Rancheria or other territory over which the Tribe has jurisdiction without a valid applicator certification document issued by the State for private applications of restricted use pesticides and a tribally-issued Pesticide Use Permit.
- (e) No commercial applicator or private applicator of restricted use pesticides shall apply pesticides in a category of applications outside the scope of their Pesticide Use Permit and applicator certificate or license issued by the State.
- (f) No person shall apply any pesticide by airplane, duster or other areal application method within the Rancheria or other territory over which the Tribe has jurisdiction
- (g) No person shall apply any pesticide within the Rancheria or other territory over which the Tribe has jurisdiction which is not registered by the EPA or which is prohibited for use within the borders of the State of California.

§6. Ban on Certain Dealings in Pesticides

No person may produce, process, manufacture, distribute, sell or offer to sell, or dispose of any pesticide(s) within the Rancheria or other territory over which the Tribe has jurisdiction.

§7. Posting and Re-Entry Requirements

- (a) Any permitted applicator must post warning signs at all entrances and exits to buildings and other structures where the permitted applicator has sprayed any pesticides.
 - (1) Where the applicator has sprayed pesticides in a small, distinct portion of a building where the pesticides will not escape the sprayed area, such as an apartment, room or office, warning signs may be posted at the entrance and exits to that sprayed area.
 - (2) The warning signs must state in large block letters in the following form or a form reasonably calculated to convey the same message: "WARNING: PESTICIDES HAVE BEEN SPRAYED IN THIS AREA. KEEP OUT OF THIS AREA FOR _____ HOURS. PERSONS MAY ENTER THIS AREA ON _____ AT _____ ENTERING THIS AREA BEFORE THE END OF THIS TIME PERIOD COULD ENDANGER YOUR HEALTH. THE FOLLOWING PESTICIDE(S) WAS(WERE) SPRAYED IN THIS AREA: _____."
 - (A) The first blank space must be filled in with the minimum re-entry period printed on the label of the pesticide applied in the area. If multiple pesticides are sprayed in an area, the longest re-entry period must be used.
 - (B) The second and third blank spaces must contain the date and time, respectively, that the re-entry period ends, based on the minimum re-entry period printed on the label of the pesticides applied in the area. If multiple pesticides are sprayed in an area, the longest re-entry period must be used.
 - (C) The fourth blank space must be filled in with the trade name and the scientific

- name for each pesticide applied in the area.
- (D) The warning sign must also state the date and time of the spraying and the name and contact information for the applicator.
- (3) Warning signs must remain posted for a minimum of twenty-four (24) hours after the end of the re-entry period listed on the label of the pesticide that has been sprayed in the building or other structure, or part thereof.
- (b) Any permitted applicator must post warning signs at all entrances and exits to outdoor areas where the permitted applicator has sprayed any pesticides.
- (1) The warning signs must state in large block letters in the following form or a form reasonably calculated to convey the same message: "WARNING: PESTICIDES HAVE BEEN SPRAYED IN THIS AREA. KEEP OUT OF THIS AREA FOR _____ HOURS. PERSONS MAY ENTER THIS AREA ON _____ AT _____ ENTERING THIS AREA BEFORE THE END OF THIS TIME PERIOD COULD ENDANGER YOUR HEALTH. THE FOLLOWING PESTICIDE(S) WAS(WERE) SPRAYED IN THIS AREA:
- (A) The first blank space must be filled in with the minimum re-entry period printed on the label of the pesticide applied in the area. If multiple pesticides are sprayed in an area, the longest re-entry period must be used. If no re-entry period for outdoor areas is printed on the label, then the re-entry period for indoor areas must be used.
- (B) The second and third blank spaces must contain the date and time, respectively, that the re-entry period ends, based on the minimum re-entry period printed on the label of the pesticides applied in the area. If multiple pesticides are sprayed in an area, the longest re-entry period must be used.
- (C) The fourth blank space must be filled in with the trade name and the scientific name for each pesticide applied in the area.
- (D) The warning sign must also state the date and time of the spraying and the name and contact information for the applicator.
- (2) Warning signs must remain posted for a minimum of twenty-four (24) hours after the end of the re-entry period listed on the label of the pesticide that has been sprayed in the outdoor area.

§8. Worker Safety

- (a) No grower or other employer shall apply or authorize the application of a pesticide in such a manner as to directly, or through spray drift or overspray, expose workers or other persons to the pesticide. The area being treated must be vacated by persons not involved in the application.
- (b) In accordance with State statutes and regulations, Tribal ordinances or Tribal EPA regulations, or federal law, whichever is most stringent and protective of human health and the environment, the grower or other employer must post warning signs around all agricultural areas or other areas treated with pesticides where the grower or other employer

has sprayed, or caused to be sprayed, any pesticides.

- (c) No grower or other employer shall permit any worker to enter any agricultural field or other area treated with pesticides until the re-entry period assigned to the pesticide, as evidenced on the label, federal regulation or communication, or State regulation or communication, or tribal ordinance or regulation, has elapsed.
- (d) When a pesticide is applied, no grower shall permit affected crops to be harvested or livestock to graze in an affected field prior to the expiration of the interval for re-entry stipulated on the label or labeling of the pesticide or pesticides used.
- (e) Any person or employee working with or applying pesticides for agricultural or commercial purposes shall wear personal protective equipment, which shall be furnished at no charge by the grower or employer.
- (f) All growers and other employers shall comply with State, federal and tribal worker protection standards.

§9. Storage, Transportation and Disposal of Pesticides and Pesticide Containers

- (a) No person shall transport, store or dispose of any pesticide, pesticide container or devices, or pesticide rinsate, in such a manner as to endanger or cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or the environment of the Rancheria or other territory over which the Tribe has jurisdiction.
- (b) Pesticides and pesticide containers shall not be left unattended at any time, except where they are being stored in a safe, secure and locked facility, posted with a sign or notice indicating pesticides or dangerous chemicals are stored therein.
- (c) All pesticides shall be stored and transported in their original container and in accordance with label recommendations. All labels of stored and transported pesticides shall be plainly visible. All pesticide containers must have a proper label affixed to them.
- (d) No pesticide shall be transported or stored with foodstuff, feed, hazardous material (as defined in the Air Quality Ordinance of the Blue Lake Rancheria), combustible material, or any other material so as to pose a hazard to humans, animals or the environment of the Rancheria or other territory over which the Tribe has jurisdiction. All pesticides must be transported in a secure manner to avoid breakage of container, spills, or any other manner of contamination of the Rancheria or other territory over which the Tribe has jurisdiction.
- (e) Empty pesticide containers shall be stored and disposed of in accordance with federal, State, and Tribal EPA regulations and label recommendations, whichever is more protective of human health and the environment, and in a manner which will not endanger humans, vegetation, crops, livestock, wildlife, beneficial insects, or the environment of the Rancheria

or other territory over which the Tribe has jurisdiction. Empty non-returnable pesticide containers shall be triple-rinsed or the equivalent. Secondary use of such containers is prohibited where it would endanger humans, vegetation, crops, livestock, wildlife, beneficial insects, or the environment of the Rancheria or other territory over which the Tribe has jurisdiction.

§10. Prohibited Pesticides

- (a) The Tribal EPA is authorized to review from time to time all reasonably accessible studies, data and information as may appear technically and scientifically viable on the health and environmental hazards associated with any pesticides.
- (b) Based on the review described in sub-section (a), the Tribal EPA is authorized from time to time to assess and determine whether any pesticides —
 - (1) could have an unreasonable adverse effect on the environment if used or applied to land;
or
 - (2) have been associated with damage to human health and the environment which, in the discretion of the Tribal EPA, tends to indicate that they could have an unreasonable adverse effect on the environment if used or applied to land.
- (c) If the Tribal EPA determines that any pesticide meets any of the criteria described in sub-section (b), above, the use of such pesticide shall be prohibited within the Rancheria or other territory over which the Tribe has jurisdiction, regardless of whether the EPA or State authorize such pesticide to be used within the United States or the State of California.

§11. Records

- (a) Commercial applicators shall keep and maintain records of each application of any pesticide, and private applicators shall keep and maintain records of each application of any restricted use pesticide, including, at a minimum, the following information:
 - (1) name and address of the owner or lessee of the property treated;
 - (2) name and address of applicator if different from (a)(1), above;
 - (3) location of treatment site, if different from (a)(1), above;
 - (4) date and time of application of the pesticide;
 - (5) windspeed and wind direction at the time of the application;
 - (6) name and EPA product registration of the pesticide, formulation, concentration, rate applied, and total amount used;
 - (7) place where the pesticide was purchased;
 - (8) method of application;
 - (9) purpose of application, including the name and type of site, crop, and target pest; and
 - (10) information regarding disposal of any pesticide container(s) used during the application, including status and location of the container(s) and the name of the person who disposed of the container(s).

- (b) Reports made pursuant to sub-section (a), above, must be signed by the applicator responsible for the application.
- (c) Records made pursuant to this section shall be completed and made available for inspection on the day the pesticide or restricted use pesticide is applied.
- (d) Such records shall be kept for a period of two (2) years from the date of the application of the pesticide or restricted use pesticide and shall be available for inspection by the Tribal EPA at reasonable times.
- (e) Commercial and private applicators required to maintain records under this section shall furnish a copy of such records to the Tribal EPA at the end of each calendar year.
- (f) Records of pesticide or restricted use pesticide applications performed by persons under the direct supervision of a certified commercial or private applicator shall be the responsibility of the supervising certified applicator.

§12. Reports of Pesticide Accidents

- (a) Commercial and private applicators must report to the Tribal EPA all accidents or potential injuries to human health and/or the environment related to pesticide applications within the Rancheria or other territory over which the Tribe has jurisdiction.
 - (1) Such accidents must be reported to the Tribal EPA within twenty-four (24) hours of the occurrence of the accident. Accidents that pose, or have the potential to pose, a serious threat to human health and/or the environment requiring emergency containment, evacuation, restoration or other measures must be reported immediately to the Tribal EPA upon disclosure of, or obtaining knowledge of a potential for, such serious threat.

§13. Authorized Activities of the Tribal EPA

- (a) The Tribal EPA shall be authorized and directed to conduct the following activities to carry out the provisions of this Ordinance:
 - (1) Enforce and carry out the provisions of this Ordinance and any rules and regulations promulgated pursuant hereto, including assessing civil fines and penalties under section 16 of this Ordinance.
 - (2) After providing for comment by Tribal Members and residents of the Rancheria, promulgate rules and regulations as may be necessary to carry out the spirit and letter of this Ordinance, including:
 - (A) imposing restrictions, requirements, controls, and prohibitions regarding regulated activities; and
 - (B) defining and designating, by map, areas of the Rancheria or other territory over which the Tribe has jurisdiction where pesticide use is limited, restricted or prohibited for the protection of human health, natural resources, cultural resources, and/or the environment.

- (3) Enter at reasonable times into, on, or through any public or private property to conduct inspections to monitor compliance with the provisions of this Ordinance and any rules or regulations promulgated pursuant to this Ordinance.
- (4) Work cooperatively with other tribes and federal, state, county and municipal governments to:
 - (A) coordinate activities and cooperate with such other governments as have similar or related responsibilities within their respective jurisdictions;
 - (B) develop intergovernmental agreements as appropriate for optimal coordination, cooperation, enforcement and assistance in carrying out this Ordinance and protecting the health and safety of the residents and the environment of the Rancheria or other territory over which the Tribe has jurisdiction, provided that the Business Council shall have ultimate authority to execute and enter into any such intergovernmental agreements.

§14. Unlawful Acts

- (a) Any person who has committed any of the following acts is subject to penalties provided in section 16 of this Ordinance:
 - (1) violated any provision of this Ordinance, any rule or regulation adopted pursuant to this Ordinance, or any condition of a Pesticide Use Permit;
 - (2) engaged in a regulated activity in a faulty, careless or negligent manner;
 - (3) operated faulty or unsafe equipment in the use, application, storage, transportation, or disposal of pesticides;
 - (4) caused a violation of any term, condition or provision of a certificate, permit or license issued by the EPA or the State which has resulted in the revocation, suspension, expiration or termination of such certificate, permit or license;
 - (5) made false or fraudulent records or reports in connection with purporting to carry out the requirements of this Ordinance;
 - (6) used fraud or misrepresentation in making an application for, or for renewal of, a Pesticide Use Permit;
 - (7) made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be used;
 - (8) made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the Tribal EPA;
 - (9) aided, abetted, or conspired with a person to evade the provisions of this Ordinance, or allowed the person's Pesticide Use Permit to be used by another person;
 - (10) knowingly made false statements during or after an inspection by the Tribal EPA; and/or
 - (11) impersonated any federal, state, or tribal official.
- (b) No commercial applicator shall apply, use, handle, store, or transport any pesticides within the Rancheria or other territory over which the Tribe has jurisdiction without first acquiring liability insurance that extends indemnity coverage for off-target damage arising out of the application of pesticides.

§15. Enforcement Process

- (a) The Tribal EPA is charged with conducting investigations, including inspections of relevant properties, to determine compliance with, or violations of, this Ordinance, any rules or regulations promulgated pursuant thereto, or any conditions of a Pesticide Use Permit.
- (1) Investigations of potential violations by the Tribal EPA shall be initiated upon the filing of a written complaint, signed under penalty of perjury, by tribal members, Business Council members, Tribal EPA staff, other staff of the Tribe, or residents of the Rancheria.
- (A) The written complaint shall be submitted on a form developed by the Tribal EPA and shall include, at a minimum, the following information:
- (i) name of the complainant;
 - (ii) date and time of the alleged violation;
 - (iii) name of the alleged violator and/or a description of the alleged violator;
 - (iv) location of the alleged violation; and
 - (v) a brief description of the factual basis for the complaint.
- (B) The written complaint must be submitted to the Tribal EPA, during normal business hours, within six (6) months of the alleged violation.
- (C) The Tribal EPA shall initiate an investigation of the complaint within ten (10) days of receiving the complaint, upon a finding that the complaint sets forth a reasonable basis for believing that a violation has occurred.
- (b) Following an investigation, if the Tribal EPA determines that a violation has occurred, the Tribal EPA may take any one of the following actions which it deems most appropriate considering the gravity of the offense, any harm to human health or the environment resulting from the violation, and the circumstances of the person committing the violation:
- (1) contact any applicator about possible violations of this Ordinance or practices which may result in violations of this Ordinance to assist the alleged violator in adhering to practices which promote the proper use of pesticides;
 - (2) issue a warning of violation, in the form of a letter from the Tribal EPA to the alleged violator, explaining the basis for the warning, possible measures which the alleged violator may take to mitigate the basis of the warning, and an explanation of the steps the Tribal EPA may take if the alleged violator does not take positive corrective action;
 - (3) assess a civil fine or penalty as described in section 16, against the alleged violator, following the procedures set out in sub-section (c), below;
 - (4) upon a finding that a violation is taking place or appears imminent, and that such activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the person responsible for such activity to cease and desist from further commission of such violation, following the procedures set out in sub-section (c), below; and/or
 - (5) following the procedures set out in sub-section (c), below, seize and quarantine any pesticide which is adulterated, misbranded, mislabeled, or detrimental to the health and safety of humans and/or the environment, or which is otherwise not in conformity with any applicable provision of this Ordinance.
- (A) The costs of transporting, storing, and disposing of such pesticides shall be placed upon the owner and/or other responsible party of such pesticides.

- (c) The following procedures shall govern enforcement actions taken pursuant to sub-section (b) (3), (4) and (5), above:
- (1) The Tribal EPA shall issue a notice of violation, describing the violation and the proposed penalty or other enforcement action, to the person who is charged with the violation.
 - (A) The notice of violation shall be served by personal delivery or U.S. mail, return receipt requested. Notice shall be considered received on the date of personal delivery or three (3) days after the notice is mailed by U.S. mail.
 - (B) The notice shall include a warning that if the person does not respond within seven (7) business days, the assessed civil penalty or other enforcement action will become permanent, and the person will lose all rights to appeal.
 - (2) Within seven (7) business days of receipt of the notice of violation, the person who is charged with the violation may submit a written request for an administrative hearing before the Tribal EPA on the proposed enforcement action described in the notice of violation.
 - (A) If a hearing is requested, the Tribal EPA must hold an administrative hearing within thirty (30) days of receiving the request. If the person requesting the hearing makes a showing, supported by a declaration or other written documentation, in the request for hearing submitted to the Tribal EPA that the proposed enforcement action will result in great financial loss or harm to person or property before the Tribal EPA is required to hold a hearing, the Tribal EPA may hold a hearing immediately or may delay or reverse any enforcement action until the Tribal EPA holds the requested hearing.
 - (B) If the alleged violator does not request a hearing within seven (7) business days of receipt of the notice of violation, the assessed civil penalty or other enforcement action will become permanent and the person shall lose all rights to appeal.
 - (3) At any hearing before the Tribal EPA, the alleged violator must come forward with evidence, including declarations, written documents, and statements by witnesses, indicating that the person is not guilty of the violation as described in the notice of violation.
 - (4) Within fifteen (15) days of the hearing, the Tribal EPA shall issue a decision on whether to affirm or retract the proposed penalty or other enforcement action described in the notice of violation, based on the evidence submitted by the alleged violator at the hearing.
 - (A) The Tribal EPA shall serve a notice of the decision on the violator. The notice of decision shall be served by personal delivery or U.S. mail, return receipt requested. Notice shall be considered received on the date of personal delivery or three (3) days after the notice is mailed by U.S. mail.
 - (5) The decision of the Tribal EPA pursuant to any administrative hearing on a proposed penalty or other enforcement action may be appealed to the Business Council upon written request submitted to the Business Council within five (5) days of the receipt of the notice of decision after the hearing. The request for a hearing must state the grounds for overturning the Tribal EPA's decision.
 - (A) The Business Council shall hold a hearing within thirty (30) days, upon a finding that the violator has stated reasonable grounds for overturning the Tribal EPA's decision.

- (B) The violator and the Tribal EPA shall have the opportunity to present oral arguments at the hearing.
 - (C) The written record from the administrative hearing before the Tribal EPA, together with all papers and requests filed in the proceeding before the Business Council, shall constitute the exclusive record for decision on appeal.
 - (D) The Business Council shall set aside the Tribal EPA's decision only upon a finding that the Tribal EPA's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.
 - (E) Within sixty (60) days of the hearing, the Business Council shall issue a decision on the appeal.
 - (F) The Business Council shall serve a notice of the decision on the violator. The notice of decision shall be served by personal delivery or U.S. mail, return receipt requested.
 - (G) Decisions of the Business Council are final.
- (d) The Tribal EPA and/or the Business Council, or a representative authorized by either body, may institute proceedings in any judicial forum of competent jurisdiction to enforce a penalty issued by the Tribal EPA and/or upheld by the Business Council on appeal.
- (e) This ordinance in no way restricts an individual's or the Tribe's right to file suit against a party in any court of competent jurisdiction for damages incurred from the improper use of any pesticide.

§16. Penalties

- (a) Any person violating any provision of this Ordinance is subject to a civil penalty of probation or suspension, revocation, non-renewal, or denial of a Pesticide Use Permit and may be assessed a civil fine by the Tribal EPA not to exceed 5,000.00 dollars per day per violation.
- (b) The Tribal EPA may also require the violator to clean up and remediate, at the violator's expense, any site or area contaminated with pesticides as a result of the violation. Remediation and clean-up procedures and standards to be used in complying with an order to remediate or clean up a site or area must be approved by the Tribal EPA prior to commencing any remediation or clean-up activities.
- (c) In determining the type and amount of the penalty and/or fine under this section, the Tribal EPA shall consider the appropriateness of such fine and/or penalty in light of: the gravity of the violation; the potential risk to human health and the environment associated with the violation; any effects on human health and/or the environment resulting from the violation; and, based on information provided by the violator, the size of the business of the person charged, and the effect on the person's ability to continue in business.
- (d) The Tribal EPA or the Business Council is authorized to take any action necessary to enforce a penalty issued under this provision, including seeking enforcement in any judicial forum of competent jurisdiction.

§17. Civil Damages and/or Injunctive Actions

In the event that any person, as a result of his or her use of any pesticides, should proximately cause any physical damage to any other person(s) residing within, or to any real or personal property situated in, the Rancheria or other territory over which the Tribe has jurisdiction, the Tribal EPA or the person(s) adversely affected shall have the right to seek monetary and/or injunctive relief in any judicial forum of competent jurisdiction.

§18. Environmental Protection Fund

- (a) All Pesticide Use Permit fees and any monies collected by the Tribe as a result of violations of this Ordinance shall be deposited with the Tribe to be credited to the Environmental Protection Fund.
- (b) The Environmental Protection Fund shall be used for expenses related to protecting human health and the environment within the Rancheria and other territory over which the Tribe has jurisdiction, enforcing the provisions of the various environmental ordinances adopted by the Tribe, promoting environmental projects, and furthering environmental education for tribal members and residents of the Rancheria and other territory over which the Tribe has jurisdiction.

§19. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

§20. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

§21. Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Business Council, the Tribal EPA, or other staff of the Tribe acting pursuant to this Ordinance.

§22. Amendments

This Ordinance may be amended at any time by the Business Council.

§23. Effective Date

This ordinance shall take effect immediately upon passage.

CERTIFICATION

As the Chairperson of the Business Council for the Blue Lake Rancheria, I hereby certify that the Business Council adopted this Ordinance at a duly called meeting at which a quorum was present by a vote of 5 for, with 0 against, with 0 abstaining, with 0 absent, on this 2nd day of January, 2000.

Claudia Brundin
Claudia Brundin, Chairperson

Jan. 2, 2000
Date

Melanie Shelanskey
Melanie Shelanskey, Tribal Secretary

Jan. 2, 2000
Date