

**ORDINANCE**  
**of the**  
**GOVERNING BODY**  
**of the**  
**SHOSHONE-PAIUTE TRIBES**  
**of the**  
**DUCK VALLEY INDIAN RESERVATION**

**ORDINANCE NUMBER: 2012-SPO-\_\_**

**An Ordinance amending and restating Ordinance 2007-SPO-03 regulating pesticides on the Duck Valley Reservation**

BE IT ENACTED BY THE BUSINESS COUNCIL OF THE SHOSHONE-PAIUTE TRIBES,

WHEREAS, the Shoshone-Paiute Tribes of the Duck Valley Reservation are a federally-recognized Indian Tribe possessing sovereign powers of self-government; and

WHEREAS, pursuant to Article VI, § 1(k), (l), (q) and (r) of the Tribes' Constitution the Business Council has the authority to "promulgate and enforce ordinances, which shall be subject for review by the Secretary of the Interior, governing the conduct of members of the Shoshone-Paiute Tribes," "regulat[e] the conduct of trade and the use and disposition of property on the reservation, provided that any ordinances directly affecting non-members shall be subject for review by the Secretary of the Interior," "cultivate and preserve native arts, crafts, culture and Indian ceremonials," and regulate tribal agencies and officials; and

WHEREAS, on February 13, 2007 the Business Council adopted Ordinance 2007-SPO-03, the Tribal Pesticides Regulatory Ordinance, which became effective on February 12, 2008; and

WHEREAS, the Tribes operate, through the Tribal Environmental Protection Program, a pesticide program which enforces the Tribal Pesticides Regulatory Ordinance and provides education and outreach about the use of pesticides. The program is supported through a cooperative agreement with U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act, as amended; and

WHEREAS, the Business Council finds it necessary to update and revise the Tribal Pesticides Regulatory Ordinance in light of the Tribes' experience administrating the pesticide program to date; and

NOW THEREFORE BE IT ENACTED THAT, the Tribal Pesticides Regulatory Ordinance is hereby amended and restated to read as follows:

## **Pesticides**

### **Chapters:**

40.	General Provisions.	( §§ 25.40.005-25.40.030)
50.	Tribal Agency for Regulation and Enforcement.	( §§ 25.50.010-25.50.060)
55.	Certification and Training.	( §25.55.010)
60.	Pesticide Applicator Permits.	( §§ 25.60.010-25.60.060)
70.	Sale and Distribution	( §§25.65.010-25.70.030)
80.	Storage and Transport.	( § 25.80.010)
90.	Operating and Worker Protection Standards.	( §§ 25.90.010-25.90.110)
100.	Disposal.	( §§ 25.100.010-25.100.030)
110.	Violations and Enforcement.	( §§ 25.110.010-25.110.040)
120.	Enforcement Cooperation with EPA, State and Local Agencies.	( § 25.120.010)
130.	Adoption of Federal Standards.	( § 25.130.010)
140.	Sovereign Immunity.	( § 25.140.010)
150.	Effective Date.	( § 25.145.010)

### **Chapter 40. General Provisions.**

**Section 25.40.005. Findings.** The Business Council makes the following findings:

- (a) Pesticides are a valuable tool for agricultural production and for the protection of humans and the environment from insects, rodents, weeds and other forms of life which may be pests.
- (b) The Duck Valley Reservation has a long history of use, storage, handling, mixing, loading, sales and distribution and improper disposal of pesticides. A reservation-wide pesticides assessment conducted from 1999 to 2001 demonstrated the need for a complete and comprehensive tribal regulatory program regarding pesticides, including community education and outreach and compliance assistance.
- (c) Unregulated pesticide uses within the exterior boundaries of the Duck Valley Reservation pose a serious and substantial threat to the health, welfare and safety of both Tribal members and nonmembers.
- (d) It is essential to the public health and welfare that pesticides are regulated to prevent adverse effects on life and the environment.

**Section 25.40.010. Purpose.** The purpose of this Code is to regulate, in the public interest, the distribution, storage, transportation, disposal, use and application of pesticides to control pests as hereinafter defined.

**Section 25.40.020. Reserved.**

**Section 25.40.030. Definitions.** The definitions of terms in this Code are found in Section 2 of FIFRA and are further set out below.

- (a) “Adulterated” applies to any pesticide if its strength falls below the declared standard of quality as stated by its labeling under which it is sold, or if any substance or constituent of the pesticide, has been substituted or extracted.
- (b) “Application equipment” means the equipment in which pesticides are applied, including, but not limited to: hand sprayer, airplane, ground rig, mounted rig, backpack sprayer, spray can, hands (scatter method), and a truck mounted-type sprayer.
- (c) “Applicator” means any person(s) applying pesticides within the exterior boundaries of the Reservation, including, but not limited to, at the following locations: farms, ranches, Tribal buildings, Federal entities, including roadsides, wetlands, schools, or hospitals, houses, and other structures where any person may apply pesticides as determined by TEPP.
- (d) “Device” means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
- (e) “EPA” means United States Environmental Protection Agency.
- (f) “FIFRA” or “the Act” means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.*
- (g) “Large amounts” means (1) six (6) gallons or more of liquid pesticide concentrate per application event; or (2) 260 gallons or more of ready-to-use liquid pesticide per application event, or (3) other forms of pesticides including powders, granules, pellets, and briquettes, which have a dry application rate in amounts of fifty (50) pounds or more per application event.
- (h) Label and Labeling
  - (1) “Label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
  - (2) “Labeling” means all labels and all other written, printed, or graphic matter—
    - (i) accompanying the pesticide or device at any time; or

- (ii) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.
- (i) “Misbranded” A pesticide is misbranded if—
- (1) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
  - (2) it is contained in a package or other container or wrapping which does not conform to the standards established by the EPA pursuant to FIFRA Section 25(c)(3);
  - (3) it is an imitation of, or is offered for sale under the name of another pesticide;
  - (4) its label does not bear the registration number assigned under FIFRA Section 7 to each establishment in which it was produced;
  - (5) any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
  - (6) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of the Act, are adequate to protect health and the environment;
  - (7) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of the Act, is adequate to protect health and the environment; or
  - (8) in the case of a pesticide not registered in accordance with Section 3 of the Act and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: “Not Registered for Use in the United States of America.”
  - (9) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if –

- (i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
    - (ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the EPA;
  - (10) the labeling does not contain a statement of the use classification under which the product is registered;
  - (11) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container can be clearly read, a label bearing—
    - (i) the name and address of the producer, registrant, or person for whom it was produced;
    - (ii) the name, brand, or trademark under which the pesticide is sold;
    - (iii) the net weight or measure of the content, except that the EPA may permit reasonable variations; and
    - (iv) when required by EPA regulation effectuate the purposes of the Act, the registration number assigned to the pesticide under the Act, and the use classification; and
  - (12) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear; in addition to any other matter required by the Act—
    - (i) the skull and crossbones symbol;
    - (ii) the word “poison” prominently in red on a background of distinctly contrasting color.
- (j) “Personal protective equipment” means clothing that is designed to protect the human body from harmful or lethal chemicals. This includes but is not limited to: respirators, splash suits, gloves, masks, shirts, coveralls, overalls, tyveks, jumpsuits, boots, and chemical protective pants.
- (k) “Pest” means any insect, rodent, nematode, fungus, weed, or 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 man or other living mammals) which the EPA declares to be a pest under FIFRA.
- (l) “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, and any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of 21 U.S.C. § 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. § 321(x) bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any

sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body, and the term “semi-critical device” includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

- (m) “Reservation” means the Duck Valley Reservation of Nevada and Idaho.
- (n) “Restricted entry interval” means the time allotment by which a person must not enter an area sprayed by pesticides.
- (o) “Restricted use pesticide” means a pesticide classified by EPA or TEPP to be restricted use.
- (p) “Unregistered pesticide” means a pesticide that does not have an active registration number from the EPA.
- (q) “Use” means mixing, loading, application, and storage of pesticides, containers and devices, disposal of pesticides, containers and devices and transportation of containers.

## **Chapter 50. Tribal Agency for Regulation and Enforcement.**

**Section 25.50.010. Regulatory and Enforcement Agency.** The Tribal Environmental Protection Program (TEPP) is hereby designated as the agency with the authority to regulate pesticides and implement and enforce the provisions of this Code.

**Section 25.50.020. Delegation of Authority.** Any authority vested in the TEPP by this Code may, consistent with this Code, be delegated to such officers or other individuals as the TEPP may designate.

**Section 25.50.030. TEPP Inspector Qualifications.** TEPP personnel conducting inspections pursuant to this Code shall secure such training as necessary to carry out their duties under this Code.

**Section 25.50.040. Entry and Inspection.** For purposes of implementing and enforcing this Code and FIFRA and upon presentation of proper credentials, the TEPP or its designated agent may enter any public or private property at reasonable times for inspection and observation of pesticide application, storage, usage, mixture, loading, production, sale, distribution or disposal or device usage, storage or disposal and collection of any samples necessary in conjunction with an inspection.

**Section 25.50.050. Investigation.** TEPP shall conduct routine inspections in order to monitor for compliance with this Code and FIFRA. TEPP shall investigate any

information or reports of possible violations of this Code within a reasonable time of receipt of such information. If TEPP receives information suggesting a life-threatening situation, the TEPP shall respond immediately and shall coordinate its response with the Tribal Emergency Response Commission.

### **Chapter 55. Certification and Training.**

**Section 25.55.010. Restricted Use and Large Amount General Use Pesticides.** Any person applying a restricted use pesticide or general use pesticide in large amounts on the Reservation must secure training and certification under an appropriate EPA-approved certification and training plan prior to such application.

### **Chapter 60. Pesticide Applicator Permits.**

**Section 25.60.010. Applicator Permit Requirement.** No person may apply a restricted use pesticide or a general use pesticide in large amounts without first obtaining a permit from the TEPP. The applicator must have a copy of a valid permit on his or her person at the time of application.

**Section 25.60.020. Term.** A permit shall be for a limited term not to exceed two (2) years.

**Section 25.60.030. Permit Application.** (a) An application for a permit must include the following information:

- (1) the date of proposed application,
- (2) the applicator's name, address, phone number and certification number
- (3) the time period of permit,
- (4) the name of the pesticide(s) to be applied,
- (5) a copy of the pesticide label including EPA registration numbers and EPA establishment numbers,
- (6) a description of the quantity, time and specific location(s) of pesticide application,
- (7) the restricted entry intervals,
- (8) a representation that applicator will comply with all label and FIFRA requirements, and
- (9) such other information as TEPP may require.

(b) The applicator must file an application for a permit no less than three (3) days prior to the pesticide application. Exceptions will be considered in emergency situations.

**Section 25.60.040. Permit Conditions.** A permit shall contain restrictions that TEPP determines are necessary to implement the purposes of this Code, including provisions related to buffer zones, for the protection of endangered and other sensitive species, water resources and sensitive areas, including but not limited to housing subdivisions, home

sites, schools, churches, public gathering places, canals, wetlands, rivers, lakes, streams, collecting sites, or any other gathering place of humans or animals. Permit conditions shall include the requirement that the applicator adhere to the standards of operation in Chapter 90 below.

**Section 25.60.050. Application for Permit After Revocation.** A prospective applicator whose permit has been suspended or revoked pursuant to Section 25.110.020 shall be eligible to reapply for a permit upon a showing that he or she has conformed his/her practices with the provisions of the Code.

### **Chapter 70. Sale and Distribution.**

**Section 25.65.010. Display of Pesticides.** Any person offering pesticides for sale must place pesticides on shelves that are out of the reach of children, preferably on the top shelf of the section of the store in which they are sold and shall not store or display pesticides next to food, feed or drink.

**Section 25.65.020. Prohibition.** Unregistered, misbranded or adulterated pesticides shall not be sold, offered for sale, distributed or offered for distribution on the Reservation unless they are expressly exempt from pesticide registration under FIFRA.

**Section 25.65.030. Tribal Pesticide Purchases.** No tribal employee may purchase, or assist in the purchase of, a pesticide without prior approval from the TEPP and a determination that the pesticide is registered by EPA for its intended use. TEPP approval shall be reflected on the tribal purchase order or similar procurement documents.

### **Chapter 80. Storage and Transport.**

**Section 25.80.010.** Pesticides shall be transported and stored in their original containers with their complete labels and in accordance with label recommendations. Pesticide containers shall be stored so that the labels are plainly visible. Pesticides shall not be stored near food or feed. Pesticides in large amounts shall be stored in a safe and secured facility to ensure that no one can use the pesticides to contaminate or harm the environment or persons on the Reservation.

### **Chapter 90. Operating and Worker Protection Standards.**

**Section 25.90.010. Scope.** Unless expressly stated otherwise, the standards set out in this chapter apply to applicators who must secure a permit under the Code. An employer of an applicator subject to the permit requirement shall be responsible for proper supervision and workplace conditions to ensure compliance with the standards in this chapter and FIFRA to same extent as an applicator.

**Section 25.90.020. Integrated Pest Management Practices.** Applicators shall consider and use integrated pest management practices. Integrated pest management refers to an ecologically based pest management strategy that provides long-term management of pest problems with a minimum impact on human health, the environment and non-target

organisms. It is a process for achieving long term, environmentally sound pest suppression through the use of a wide variety of technological and management practices, chemical and non-chemical. Tribal departments shall use integrated pest management techniques in carrying out pest management activities and shall promote integrated pest management through procurement and regulatory policies, and other activities. TEPP shall promote and provide instructional materials to applicators regarding such practices and shall promptly respond to requests from applicators for assistance in using such practices.

**Section 25.90.030. Best Management Practices.** Applicators shall implement best management practices in order to minimize impacts on the environment and public health by reducing the loss of pesticides to the environment and to encourage the efficient use of pesticides. TEPP shall provide instructional materials to applicators regarding such practices and shall promptly respond to requests from applicators for assistance in using such practices.

**Section 25.90.040. Mixing and Loading.** Pesticides may be mixed and loaded only on a contained surface where the pesticides will not have any contact with ground surface and in no case near a riparian or public area. A contained surface is a concrete berm lined with an applied dry polymer and/or painted surface that allows for no leaking of the pesticides.

**Section 25.90.050. Personal Protective Equipment.** Each applicator shall don the proper personal protective equipment according to the label and as necessary for protection.

**Section 25.90.060. Decontamination.** Applicators shall provide pesticide workers, handlers and mixers with adequate decontamination equipment, including clean water, soap, single use towels and eye wash.

**Section 25.90.070. Compliance with Pesticide Label and Retention of Material Safety Data Sheet.** An applicator shall read and follow the label instructions for the pesticide product which the applicator is applying. An applicator shall maintain on file a copy of a material safety data sheet for each pesticide which the applicator stores or uses.

**Section 25.90.080. Posting Signs About Restricted Entry Intervals.** Prior to applying a pesticide an applicator shall post, at each point of entry to the area of pesticide application, a sign announcing the date of application, that entry into the area is prohibited, and the duration of the prohibition. The time period for restricted entry shall be established according to requirements on the label of the pesticide applied.

**Section 25.90.090. Use of Cancelled or Suspended Pesticide Prohibited.** No person may apply or store pesticides on the Reservation that have been cancelled or suspended by the EPA. Cancelled or suspended pesticides shall be disposed of in a manner consistent with FIFRA or the label, or requirements determined by TEPP, whichever is more stringent.

**Section 25.90.100. Pesticide Worker Exposure.** In the event that an employee on the Reservation may have been poisoned or injured by exposure to a pesticide, including but not limited to, exposure from application, splash, spill, drift, or pesticide residue, the employer must:

- (a) Ensure that the employee is promptly transported to an appropriate health treatment facility,
- (b) Promptly provide the employee or treating medical personnel all available information on: (1) pesticide product name, EPA registration number, and active ingredients of any product to which the employee might have been exposed, (2) antidote, first aid, and other medical information from the product labeling, (3) the circumstances of the injury or exposure, and (4) such other available information requested by the employee or treating medical personnel, and
- (c) Make a written report to the TEPP within twenty-four (24) hours.

**Section 25.90.110. Reporting Pesticide Drift and Overspray.** Any person applying pesticides on the Reservation shall report any possible drift or overspray of a pesticide immediately to the TEPP. Upon receipt of such a report, TEPP shall take appropriate action to minimize effects on the environment and human health and notify other agencies, if necessary.

**Section 25.90.110. Notice of Intent to Apply and Reporting.** (a) No less than three (3) days prior to application of a pesticide applicator holding a permit shall provide written notice of intent to apply to the TEPP. Such notice shall include the following information with respect to such application: (1) the date of proposed application, (2) the name of the pesticide(s) to be applied, and (3) a description of the quantity, time and specific location(s) of pesticide application.

(b) After completing a pesticide application, an applicator holding a permit shall file a report on a form supplied by TEPP regarding the pesticides used, including amount and location and such other information that TEPP may require.

(c) An applicator who applies a pesticide as a part of the applicator's employment or business shall also be subject to the requirements of this Section 25.90.110 even if the applicator does not require or hold a permit pursuant to Chapter 60.

## **Chapter 100. Disposal.**

**Section 25.100.010. Empty Equipment and Follow Label.** The entire quantity of a pesticide must be used until the pesticide application equipment is empty unless the equipment is transported off the Reservation immediately after application. Pesticides shall be disposed of in accordance with the label instructions. Cancelled or suspended pesticides shall be disposed of as required in Section 25.90.090.

**Section 25.100.020. Disposal at Transfer Station.** No pesticide disposal is permitted at the Duck Valley Transfer Station, provided that empty pesticide containers may be

disposed of at the Transfer Station if they are rinsed in accordance with Section 25.100.030.

**Section 25.100.030. Procedures for Rinsing Containers.** (a) Applicators shall follow the following procedures to rinse pesticide containers prior to disposal of such containers:

- (1) Wear the personal protective equipment indicated on the label for handling and mixing.
- (2) Remove the cap from the pesticide container, and empty all pesticide into the spray tank, allowing the container to drain for 30 seconds.
- (3) Begin rinsing immediately, or the product may be difficult to remove. If you cannot rinse the container immediately, replace the cap.
- (4) Fill the container 10% to 20% full of clean water and replace the cap onto the container.
- (5) Swirl the liquid vigorously within the container to rinse all inside surfaces and the inside of the cap.
- (6) Remove the cap from the container. Add the rinsate from the pesticide container to the spray tank and allow to drain for 30 seconds or more.
- (7) Repeat steps (1) through (6) two more times.
- (8) Puncture the container to make it unusable.
- (9) Replace cap and dispose of pesticide container according to label directions.

(b) All rinsate from the pesticide application equipment and pesticide container must be disposed of according to the label instructions.

## **Chapter 110. Violations and Enforcement.**

**Section 25.110.010. Violations.** It shall be unlawful to:

- (a) Fail to comply with any provision of this Code, a permit, any lawful order of the TEPP or its designated agent, FIFRA or regulations issued under FIFRA.
- (b) Use or recommend the use of, sell or distribute any unregistered pesticide.
- (c) Use or recommend the use of a pesticide in a manner inconsistent with its label.
- (d) Aid or abet a person in evading the provisions of this Code, conspire with a person in evading the provisions of this Code, or allow one's permit to be used by another person.

- (e) Make false or misleading statements with respect to the implementation of this Code.
- (f) Impersonate any Tribal government official regarding implementation of this Code.
- (g) Detach, alter, deface, or destroy in whole or in part any labeling required under FIFRA.
- (h) Apply pesticides onto any land within the Reservation without the consent of the owner or person in possession thereof except for governmental agencies which must abate public health problems.
- (i) Prevent any entry, inspection, copying of records or sampling authorized by this Code.
- (j) Transport or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a manner harmful to any wildlife therein.
- (k) Fail to report a pesticide injury or accident as required by Section 25.90.100.

**Section 25.110.020. Enforcement.** (a) *Informal Communication.* If the TEPP has good cause to believe, based upon an investigation by the TEPP or its agent, that a person may have violated this Code, the TEPP may informally contact the person about the suspected violations in order to assist the person in conforming his or her practices to the Code.

(b) *Warning of Possible Violation.* Upon investigation and reasonable belief that a violation of the Code has occurred or may occur, the TEPP or its agent may issue a Warning of Possible Violation in the form of a letter to the violator. The letter shall explain the basis for the Warning, the actions required to come into compliance with the Code, and an explanation of the steps that the TEPP may take if the violator fails to conform his or her practices to the Code.

(c) *Revocation, Suspension or Modification of Permit.* Upon investigation and reasonable belief that an applicator holding a permit has violated a provision of this Code, the TEPP may revoke, suspend or modify the applicator's permit. TEPP may take action against a permit without issuing a Warning of Possible Violation first. Before taking action against a permit, TEPP shall provide the applicator with notice and an opportunity for a hearing. Such hearing shall be held before the TEPP and according to the provisions of Section 25.110.030. Upon a finding by the Director of the TEPP that the applicator has violated the Code, the Director may revoke, suspend, or modify the applicator's permit.

(d) *Appeal of Adverse Action on Permit to Tribal Court.* An applicator may appeal to Tribal Court a decision revoking, suspending or modifying the applicator's permit, provided such appeal is filed within thirty days of the date of the Director's decision. The Tribal Court shall affirm such decision unless it finds that it is arbitrary or capricious, contrary to law or unsupported by substantial evidence.

(e) *Emergency Suspension of Pesticide Application or Other Practice Threatening Imminent Harm.* If the TEPP determines, based upon reasonable information, that an emergency situation exists which may endanger the Reservation environment, wildlife, or human health, it shall be empowered to issue an emergency order suspending, for a period of not more than seven days, any pesticide application or other practice that could cause imminent harm, such as improper storage, disposal, transportation, sale and distribution of an unregistered pesticide. Such order shall have the effect of temporarily suspending the applicator's permit for applications that threaten the health, of the Reservation environment, wildlife or human health. Pursuant to Section 25.110.030, the Director of TEPP shall hold a hearing to determine whether the suspension shall be made permanent within seven days of the order of temporary suspension. The person subject to an emergency order may appeal such emergency order to Tribal Court.

**Section 25.110.030. Hearings.** (a) *Requirements for Hearings.* Prior to revoking, modifying, or suspending an applicator's permit or making permanent a temporary suspension of application of a pesticide or other practice pursuant to Section 25.110.020(e), the TEPP shall provide a person suspected of violating any provision of this Code with a hearing pursuant to this Section 25.110.030.

(b) *Notice Requirements.* The TEPP shall provide the alleged violator notice of a hearing conducted pursuant to this Section. Such notice shall inform the alleged violator of the action that constitutes the violation, the relevant law, the time and place for the hearing, and a statement that the decision of the TEPP may be appealed to the Tribal Court. TEPP shall provide notice either in person or by United States certified mail.

(c) *Conduct of Hearing.*

- (1) The TEPP Director shall conduct the hearing within seven days of providing the alleged violator with notice of the hearing and suspected violation, unless the Director finds upon motion of the alleged violator, that there is good cause to hold the hearing more than seven days after providing the alleged violator with notice.
- (2) The proceeding shall be recorded. The record in the hearing shall include the notice provided to the alleged violator, any written response made by the alleged violator either before or during the hearing, evidence admitted by the Director, the transcript or tape recording from the hearing, and the written decision of the Director.
- (3) The alleged violator may be represented by legal counsel or any other representative at his own expense and shall have the right to

present oral and written testimony of witnesses under oath. The alleged violator may cross examine all witnesses and submit rebuttal evidence.

- (4) Prior to the hearing, the alleged violator shall have the right to inspect relevant records.
- (5) The Director of the TEPP shall preside over the hearing and administer oaths to witnesses who testify. The hearing shall be informal and the Rules of Civil Procedure shall not apply. Technical rules of evidence shall not apply, but evidence which is clearly irrelevant, incompetent, immaterial, and prejudicial or would otherwise be unfair if admitted may not be admitted by the Director. The Director shall have power to take evidence under oath and issue subpoenas to compel the attendance or witnesses or for the production of evidence. The Tribal Court shall enforce any such subpoena in the same manner as its own. The Director and other representative of the TEPP may cross examine and otherwise question witnesses.

(d) *Decisions.* The Director's decision shall be based upon the entire record. The decision shall be in writing and shall be issued no later than ten days following the hearing. The Director shall notify the alleged violator and other interested persons who appeared at the hearing of the decision.

**Section 25.110.040. Civil Fines and Injunctions.** (a) Any person violating this Code shall be subject to imposition by Tribal Court of: (i) a civil fine of up to \$1,000 per violation for a minor violation, (ii) up to \$5,000 per violation for a major violation, and/or (iii) a fine in the amount of costs incurred by the Tribes to clean up the effects of the violation. The Tribal Court shall have the authority to grant injunctive relief as necessary to enforce the provisions of this Code.

(b) If a person fails to conform his or her practices to this Code in accordance with a Warning of Possible Violation, the TEPP may bring an action in Tribal Court for a civil fine and/or injunctive relief pursuant to this Section 25.110.040.

(c) The Tribal Court shall have jurisdiction over an action brought by TEPP pursuant to this Section 25.110.040, an action brought by any person for violations of this Code and appeals filed pursuant to Section 25.110.020(d) and (e).

(d) Fines collected under this Code shall be deposited with the Tribes for use by the TEPP for costs of implementing and enforcing this Code.

## **Chapter 120. Enforcement Cooperation with EPA, State and Local Agencies.**

**Section 25.120.010. Agreements.** The Business Council may enter on behalf of the Tribes into agreements with EPA and state and local agencies to coordinate the implementation and enforcement of this Code.

**Chapter 130. Adoption of Federal Standards.**

**Section 25.130.010. Federal Standards.** The Tribes hereby incorporate by reference the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and the Federal Worker Protection Standards in 40 CFR Part 170. In the event that a pesticide, device or activity related to pesticides is regulated by this Code and FIFRA, the more stringent law applies.

**Chapter 140. Sovereign Immunity.**

**Section 25.140.010. No Waiver.** Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribes.

**Chapter 150. Effective Date**

**Section 25.150.010. Effective.** This Code shall be effective upon enactment by the Business Council.

C E R T I F I C A T I O N

It is hereby certified that the Business Council of the Shoshone-Paiute Tribes of the Duck Valley Reservation is composed of a Chairman and six members, of whom five constitute a quorum, were present at a meeting duly held on the \_\_\_\_ day of October, 2012, and that the foregoing Ordinance was passed by the affirmative vote of \_\_\_\_ FOR; \_\_\_\_ AGAINST; \_\_\_\_ ABSTENTIONS; pursuant to the authority contained under Article IV, Section 1 of the Tribal Constitution and the Bylaws, approved April 20, 1936.

\_\_\_\_\_  
Terry Gibson  
Tribal Chairman

\_\_\_\_\_  
Angele SaBori  
Executive Secretary