

**OMAHA TRIBAL CODE (2013)**

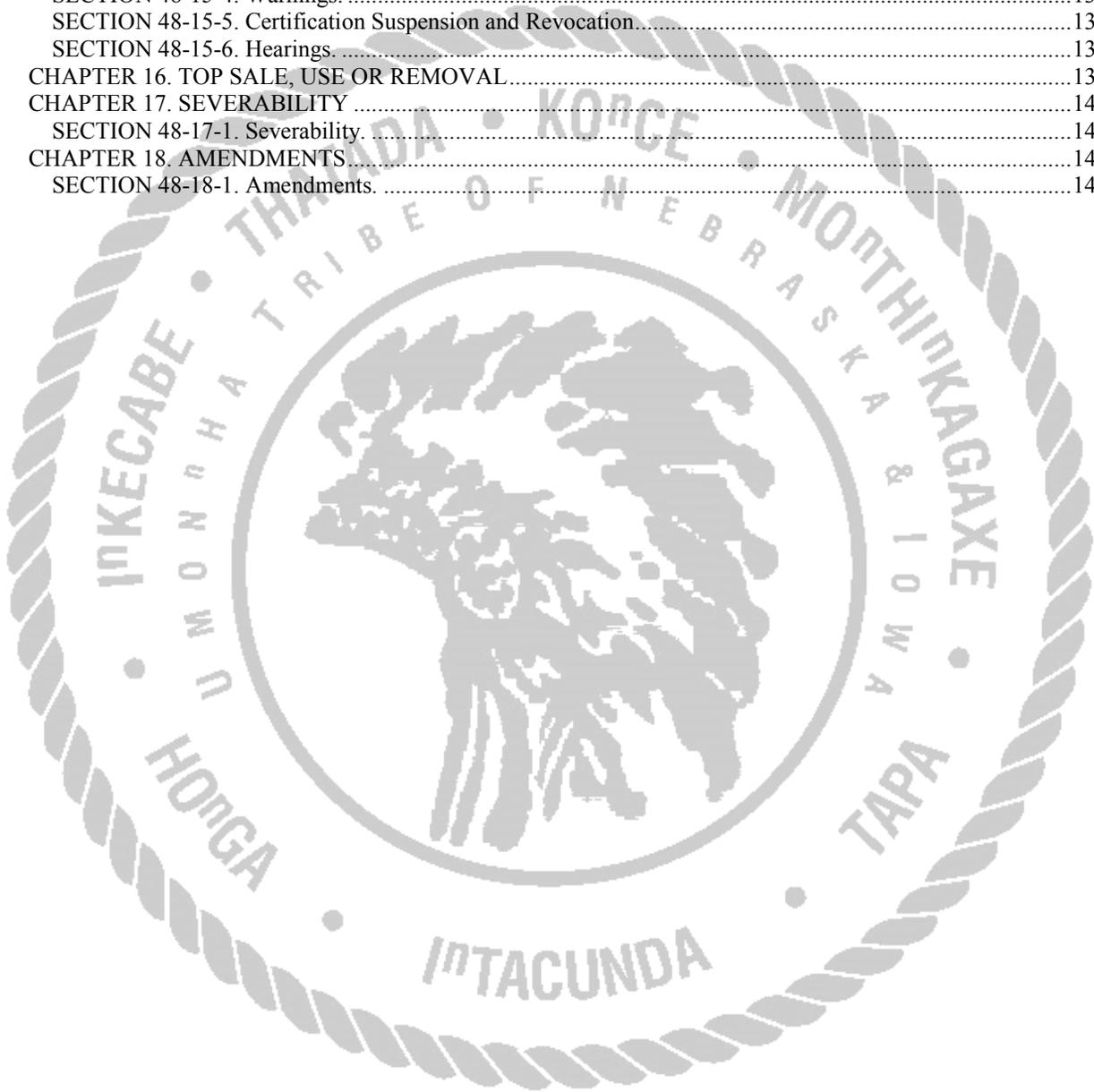
**TITLE 48. PESTICIDE CONTROL**

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# OMAHA TRIBAL CODE (2013)

## TITLE 48. PESTICIDE CONTROL

*Source:* Omaha Tribal Council Resolutions No. 95-147 (9/26/95), No. 97-16 (10/10/96), and No. 97-35 (12/30/96)

### CHAPTER 1. GENERAL PROVISIONS

#### SECTION 48-1-1. Authority.

This Title is enacted pursuant to:

- (a) The Constitution of the Omaha Tribe of Nebraska approved by the Secretary of the Interior on June 18, 1934 and
- (b) All treaties entered into by the Omaha Tribe of Nebraska and the United States of America; and
- (c) Title 7, United States Code, Section 121, 136, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), specifically, Section 23, as amended, which authorizes the Administrator of the United States Environmental Protection Agency to enter into cooperative agreements with the states and Indian Tribes to enforce the provisions of FIFRA, and train and certify applicators.

#### SECTION 48-1-2. Policy.

In the belief of the Omaha Tribe, Niashi" ga (the people) have been on E Na' ho Ton' de (Mother Earth) since the beginning of time. The Omaha have depended on their keen ability to observe the workings and interrelationships of the natural world and have used this ability in forming their ethical code.

The Omaha Tribe and its members hold unique, cultural attachment to Mon thi ka (the Soil), Ni (the Water), Mon' xe (the Sky), Wachi' shka (the Streams and Creeks), Xtha' be (the Trees and Bushes) and the Wani' to (the Animals) of the Reservation and they understand the relationships these natural objects have in the Circle of Life.

At this time, the Omaha Tribe feels it is crucial to implement this Title to protect these resources which sustain the lives of all Tribal members and other individuals who live and work on the Reservation. This Title is also intended to express the Omaha Tribe's desire to encourage sound development of these resources for the benefit of all.

#### SECTION 48-1-3. Intent.

This Title, and the provisions contained herein, is regulatory and civil in nature. It has been adopted to codify the prudent management interests of the Tribe and the natural resources over which it is legally and ethically responsible. All prohibitions established by this Title shall apply to and be enforced against all persons by civil enforcement and/or by prosecution in the Omaha Tribal Court.

This Title, adopted by the Tribal Council and administered through its Environmental Protection Department, is intended to regulate the use of pesticides on the Reservation of the Omaha Tribe by:

- (a) Authorizing and empowering the Restricted Use Pesticide Committee, within the Tribal Environmental Protection Department, to develop and establish rules and regulations relating to their use,
- (b) Managing and supervising the usage of Restricted Use Pesticides and related activities,
- (c) Establishing applicator qualifications for individuals and employees of businesses desiring to obtain Tribal Certification to use these products, and
- (d) Defining prohibited acts and establishing penalties pertaining to the improper use of these materials and products.

#### SECTION 48-1-4. Effective Date.

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This Title supersedes any and all prior codes pertaining to the use of pesticides on the Reservation of the Omaha Tribe and shall become effective on January 1, 1996.

## SECTION 48-1-5. Name.

This Title, and any additional provisions pertaining to the use of pesticides and/or chemigation and the enforcement of the same, adopted by the Omaha Tribal Council, shall be known as the PESTICIDE CONTROL LAW, and will be enforced by the Tribe's Environmental Protection Department through the Tribal Pesticide Officer.

## CHAPTER 2. AGREEMENTS

### SECTION 48-2-1. Cooperative and Reciprocal Agreements.

The Omaha Tribal Council is authorized to cooperate with and enter into reciprocal and cooperative agreements with the State of Nebraska and Iowa and any other governments or government agencies, Tribal, Federal or otherwise, for the purpose of promoting the prudent use of pesticides and the administration of effective certification programs. All such agreements will derive their authority from and be enforceable under the PESTICIDE CONTROL LAW.

## CHAPTER 3. DEFINITIONS

The following terms or words shall have the meaning here ascribed to them unless a different meaning clearly appears from the context:

### SECTION 48-3-1. Tribal Terms.

For purposes of this Title:

- (a) *Wani' ta* means animals (general term).
- (b) *Xtha' he* means tree or bush (general term).
- (c) *Mon' xe* means sky.
- (d) *Ni* means water.
- (e) *Ton' de* means Earth.
- (f) *Mon' thi ka* means soil.
- (g) *Wachi' shka* means creek or stream.
- (h) *E na 'ho* means Mother (male version).
- (i) *Niashi'' ga* means the people

### SECTION 48-3-2. Other Terms.

(a) The term "Administrator" means the Administrator of the United States Environmental Protection Agency or his/her designated agent.

(b) The term "agricultural commodity" means any plant, or part thereof, animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by humans or animals.

(c) The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(d) The term "certified applicator" means any individual who is certified under this Title to use or supervise the use of any restricted use pesticide designated by his/her certification.

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- (e) The term "certification" means the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of pesticides.
- (f) The term "chemical" or "farm chemical" shall mean any fertilizer, herbicide, or pesticide.
- (g) The term "chemigation" shall mean any process whereby chemicals are applied to land or crops in or with water through an irrigation system.
- (h) The term "Title" means the PESTICIDE CONTROL LAW.
- (i) The term "Committee" means the Tribal "Restricted Use Pesticide" committee.
- (j) The term "commercial applicator" means an individual who is certified under this Title (whether or not a private applicator with respect to some uses) to use or supervise the use of any pesticide which is classified for restricted use for any purpose or on property other than those provided for private applicators.
- (k) The term "Council" means the Omaha Tribal Council, the constitutionally authorized governing body of the Omaha Tribe of Nebraska.
- (l) The term "dealer" means any individual who offers pesticides for sale to individuals with current applicator credentials.
- (m) The term "dealership" means any site owned or operated by an individual where pesticides are offered for sale to the public.
- (n) The term "Director" means the Director of the Department of Agriculture of the State of Nebraska.
- (o) The term "EPA" means the United States Environmental Protection Agency.
- (p) The term "environment" includes water, air, land, and all plants and man and other animals living therein, and the inter-relationships which exist among these.
- (q) The term "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as Amended (1972, 1975, 1978, and 1988) 7 U.S.S. 136 et seq.
- (r) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insects, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.
- (s) The term "label" or "labeling" means the written, printed, or graphic matter on, attached to or accompanying the pesticide container at any time or 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 Department of Agriculture and Interior, the United States Department of Health and Human Services, the United States Department of Education, State Experiment stations, State or Tribal institutions or agencies authorized by law to conduct research in the field of pesticides
- (t) The term "land" means the solid part of the surface of the Earth, including both soil and water areas, and all the natural resources appurtenant thereto.
- (u) The term "non-commercial applicator" means an individual certified to use or supervise the use of Restricted Use Pesticides on land owned or controlled by the individual's employer or for a governmental agency or subdivision of the State.
- (v) The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
- (w) 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 microorganisms (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c) (1) of FIFRA or which the Pesticide Enforcement Program declares to be a pest.

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(x) The term "pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided, that the term "pesticide" shall not include any article (1) (a) that is a "new animal drug" within the meaning of Section 201 (w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 (w)), or (b) 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 (2) that is an animal feed within the meaning of Section 201 (x) of such Act (2 U.S.C. 321 (x)) bearing or containing an article covered by clause (1) of this proviso.

(y) The term "pesticide container" means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding spray applicator tanks) used to enclose a pesticide or pesticide related waste.

(z) The term "private applicator" means an individual certified to use or supervise the use of Restricted Use Pesticides for the purposes of producing or protecting any agricultural commodity or landscape plant or to control pest populations on property owned or rented by him/her or his/her employer (if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person).

(aa) The term "point of injection" shall mean each site where chemicals are or will be applied through an irrigation system used for chemigation.

(bb) The terms "protect health and the environment" and "protection of health and the environment" means protection against any unreasonable adverse effects on the environment.

(cc) The term "Reservation" or "reservation lands" means the area in northeast Nebraska retained by the Omaha Tribe within its Treaty of 1865 with the United States of America, including both land and water areas, and all rights of way, waterways, streams, lakes, highways, and railroads rights of way within the Exterior boundaries.

(dd) The term "restricted use pesticide" means any chemical classified for restricted use by the Administrator of the United States Environmental Protection Agency or the Restricted Use Pesticide Committee of the Omaha Tribe.

(ee) The term "Secretary" means the Secretary of the Department of Agriculture of the State of Iowa.

(ff) The term "Tribal Court" means the Omaha Tribal Court located in Macy, NE on the Reservation of the Omaha Tribe.

(gg) The term "Tribal Pesticide Officer" means an individual designated, authorized and empowered by the Omaha Tribe and the United States Environmental Protection Agency to issue tribal certification, conduct inspections and enforce the provisions of this Title and of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., as amended.

(hh) The term "unreasonable adverse effects on the environment" means any risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(ii) The term "weed" means any plant which is growing where it is not wanted.

(jj) The term "wildlife" means all living things that are neither human, domesticated, nor pest, as defined in this Title, including but not limited to mammals, birds, and aquatic life.

### CHAPTER 4. PESTICIDE ADMINISTRATION FUND

All money received from any source including but not limited to fees and fines, excluding Federal Grants in aid, pursuant to the Title shall be remitted to the Pesticide Administration Fund, which fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the Title. Any fund balance, at the end of the fiscal year, in excess of actual pesticide program needs will be transferred to the Tribe's general fund.

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## CHAPTER 5. THE COMMITTEE

### SECTION 48-5-1. Authority.

This Title authorizes and empowers the Restricted Use Pesticide Committee to implement the provisions of this Title, specifically:

- (a) Review and annually recommend changes to the PESTICIDE CONTROL LAW.
- (b) Promulgate regulations pertaining to the use of pesticides.
- (c) Adopt and Implement an Enforcement Response Policy.
- (d) Restrict the use of additional pesticide products to prevent damage to the environment.

### SECTION 48-5-2. Committee Membership and Terms of Membership.

The Restricted Use Pesticide Committee shall consist of seven members appointed by the Tribal Council of the Omaha Tribe for three year terms. At least two members of the Restricted Use Pesticide Committee, but not more than three, shall be residents of the Reservation who are knowledgeable of and actively involved in the use of pesticides or modern agriculture. The following conditions shall be considered grounds for removal from the Restricted Use Pesticide Committee:

- (a) Failure to disclose a conflict of interest concerning a violation of this Title or regulations pertaining to pesticide use.
- (b) More than three absences from regularly scheduled RUP meetings within a calendar year.
- (c) Any violations pertaining to pesticide use that is determined by the Restricted Use Pesticide Committee or the Omaha Tribal Council to have a detrimental effect on the environment or community.

### SECTION 48-5-3. Provisions.

The Committee shall develop and implement by-laws governing its operation which shall include

- (a) Provisions for public access to all Committee meetings, activities, minutes and official actions,
- (b) Provisions to provide all individuals effected by this Title with copies of all rules and regulations pertaining to pesticide use on the Reservation of the Omaha Tribe, and
- (c) Provision to provide all individuals with an opportunity to voice their opinions on any matters coming before the Committee.

## CHAPTER 6. CLASSIFICATION OF PESTICIDES

### SECTION 48-6-1. Pesticide Classification.

Pesticide products introduced for use on the Reservation of the Omaha Tribe shall be considered for "restricted use" or "general use" as determined by the Administrator of the Environmental Protection Agency.

### SECTION 48-6-2. Tribal Authority.

The Restricted Use Pesticide Committee may also restrict or prohibit the use of any pesticide to prevent damage to property, other than the property to which it is directly applied, or to persons, animals, wildlife, crops or vegetation other than the target pest(s) that it is intended to control.

## CHAPTER 7. CERTIFICATION REQUIRED

### SECTION 48-7-1. General Instructions.

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No person residing on the Reservation of the Omaha Tribe, with the exceptions stated in Chapter Eight, shall apply restricted use, and in certain instances general use, pesticides without first obtaining an applicator's certificate from the Tribal Environmental Protection Department.

### **SECTION 48-7-2. Application Procedure.**

Tribal certification for private, non-commercial and commercial applicators shall be issued to applicants, upon:

- (a) A demonstration that the applicant has practical knowledge of the principles and practices of pest control and the fundamentals of safe pesticide usage,
- (b) Evidence of a basic understanding of the Pesticide Control Law and
- (c) Receipt of the application fee, if one is set.

### **SECTION 48-7-3. Certification Exemptions:**

Individuals not appropriately certified under this Title are prohibited from applying restricted use, and for certain categories general use, pesticides within the exterior boundaries of the Reservation of the Omaha Tribe, with the exception of those individuals as stated in Chapter Eight of this Title.

### **SECTION 48-7-4. Term of Certification.**

Tribal certification for commercial, non-commercial, and private applicator licenses shall be valid for three years. Persons certified to apply pesticides by the Nebraska Department of Agriculture or the United States Environmental Protection Agency, prior to the adoption of this Title, will not be required to obtain a Tribal Pesticide Certificate until the expiration of their current certificate.

## **CHAPTER 8. NON-CERTIFIED APPLICATORS**

### **SECTION 48-8-1. Registration.**

Employers of temporary and seasonal employees, who as part of their employment are required to make commercial pesticide applications, will be required to register the names of these employees with the Tribal Environmental Department within 30 days of their initial employment. The employer, supervisor, or responsible party must hold a valid, current, Tribal commercial applicators certificate and supervise these employees while they are applying pesticides.

### **SECTION 48-8-2. General Conditions.**

The following additional conditions will also apply to Non-Certified Applicators.

- (a) May only use such pesticides for a maximum period of sixty consecutive days,
- (b) May only use pesticides as a non-certified applicator for one sixty-day period,
- (c) Must apply for a certified applicator license that includes the name and license number of the certified applicator who is supervising the non-certified applicator, within ten days of making the first pesticide application.

Both the certified and non-certified applicators shall be responsible for the acts of the non-certified applicator and each shall be subject to all penalties and violations of this Title. The Restricted Use Pesticide Committee may deny or suspend the use of pesticides by a non-certified applicator if it has reasonable cause to believe that such person may not become eligible to become a certified applicator or uses any pesticide in violation of this Title.

### **SECTION 48-8-3. Supervision and Training.**

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All pesticide applications made by a non-certified individual shall be made under the direct supervision of a certified applicator.

The certified applicator shall provide such supervision and training as necessary to:

- (a) Determine the level of experience and knowledge of a non-certified applicator in the use of a pesticide,
- (b) Provide verifiable, detailed guidance on how to conduct each individual pesticide use performed under his or her direct supervision,
- (c) Accompany the non-certified applicator to the initial and at least one other site which is typical of each type of pesticide use that the non-certified applicator performs,
- (d) Be accessible to provide further instructions at all times during the noncertified applicator's use of the pesticide,
- (e) Be able to be physically on the site, should the need arise, where the pesticide use is taking place within one hour.

### SECTION 48-8-4. Additional Exceptions.

This Title does not apply to Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

## CHAPTER 9. CLASSIFICATION OF PESTICIDE APPLICATORS

### SECTION 48-9-1. General.

Pesticide applicators shall be classified as private, non-commercial or commercial applicators according to the definitions shown in Chapter Three of this Title.

### SECTION 48-9-2. Private Applicators.

Private Applicators shall be certified to use Restricted Use Pesticides to control pest populations on property owned or rented by the applicator or if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. There are no categories within this classification.

### SECTION 48-9-3. Commercial Applicator Categories.

Commercial applicators may be trained, tested and certified in one or more of the categories listed in Section 48- 9-4.

### SECTION 48-9-4. Commercial Applicators Categories.

Commercial applicators may be trained, tested and certified in one or more of the categories below:

- (a) Agricultural Pest Control - Plant: Applicators using or supervising the use of restricted use pesticides in the production of agricultural crops, including, but not limited to, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and non crop agricultural land.
- (b) Fumigation of soil – Commercial: Applicators using or supervising the application of restricted use pesticides for soil fumigation in production of an agricultural commodity. Any individual certified in this category is required to be certified in category (a) Agricultural Pest Control - Plant.
- (c) Agriculture Pest Control - Animal: Applicators using or supervising the use of restricted use pesticides on animals, including without limiting to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and other livestock, and to places on or in which animals are confined.
- (d) Forest Pest Control: Applicators using or supervising the use of restricted use pesticides in

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forests, forest nurseries, and forest seed producing areas.

(e) Ornamental and Turf Pest Control: Applicators using or supervising the use of any pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf. This category includes any individual who applies any pesticides, restricted use or otherwise to a property, other than their own, for hire or compensation.

(f) Aquatic Pest Control: Applicators using or supervising the use of restricted use pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in public health category below.

(g) Seed Treatment: Applicators using or supervising the use of restricted use pesticides on seeds.

(h) Right-of-Way Pest Control: Applicators restricted use pesticide in the maintenance of right of way including but not limited to public roads, electric power lines, pipelines, railway rights-of-way, fence lines, structural perimeters, or other similar areas.

(i) Structural and Health Related Pest Control: Applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public, private, or for the protection of stored, processed, or manufactured products. This category includes any individual who applies any pesticides, restricted use or otherwise to a property, other than their own, for hire or compensation.

(j) Public Health Pest Control: State, Federal, Tribal, or other governmental employees who apply or supervise the application of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance. This category also includes applicators using or supervising the use of restricted use pesticides in swimming pools and related facilities and cooling water systems used to transfer or dissipate heat.

This category also includes commercial and noncommercial applicators using or supervising the use of restricted use pesticides to disinfect or sterilize medical/veterinary equipment, food/beverage/drug processing equipment, and the environmental surfaces of such places as hospitals/nursing homes, food processing areas, and plant and animal breeding facilities.

(k) Wood Preservation: Applicators using or supervising the use of restricted use pesticides to control pests that damage or destroy wood or wood products must be certified for wood preservation pest control.

(l) Fumigation: Applicators using or supervising the use of restricted use pesticides within enclosed gas tight spaces such as tents, vaults, stacks, structures, vehicles, or vessels to control pests must be certified for grain fumigation pest control.

(m) Aerial Pest Control: Applicators using restricted use pesticides applied by fixed or rotary wing aircraft for use in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, fence lines, structural perimeters, other similar areas, and in the production of agricultural crops, including, but not limited to, feed grains, soybeans and forage, vegetables, small fruits, tree fruits, and nuts, as well as on grasslands and non-crop agricultural land.

(n) Regulatory Demonstration and Research: State, Federal, Tribal, or other governmental employees who apply pesticides to control regulated pests under State, Federal, or Tribal quarantine with the exception of noxious weeds. This category also includes individuals who apply restricted use pesticides

### CHAPTER 10. RECORD KEEPING REQUIREMENTS

#### SECTION 48-10-1. Certified Applicators.

The following conditions shall apply:

(a) All applicators shall maintain records of their use of any restricted use pesticides and the Restricted Use Pesticide Committee shall promulgate rules and regulations pertaining to

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RECORDKEEPING requirements including, but not limited to, duration, length of time records are to be maintained, and application rate

(b) All Certified Applicators shall furnish a copy of such records to the Tribal Pesticide Officer upon request.

(c) Records of restricted use pesticide applications performed by persons under the direct supervision of a certified commercial applicator shall be the responsibility of the supervising certified applicator.

(d) Records shall be maintained a minimum amount of time equal to that stated in 40 CFR 171 7(b) (iii) (E).

### **SECTION 48-10-2. Dealer Recordkeeping.**

Individuals who offer for sale and distribution Restricted Use Pesticides, by retail or wholesale means, shall keep, at each individual dealership, records of each transaction involving the transfer of any Restricted Use Pesticide. The Restricted Use Pesticide Committee shall promulgate the rules and regulations prescribing the information to be included in these records.

### **SECTION 48-10-3. Availability of Required Records.**

Each pesticide dealer shall, upon request of the Tribal Pesticide Officer, permit access to all records required to be maintained under this section.

### **SECTION 48-10-4. Failure to Comply.**

Any person who fails to comply with the provisions of this Title may be subject to civil sanctions under this Title, or referred to EPA for possible criminal enforcement proceedings under federal law. Violations shall include failure to keep or submit records and the falsification of records as required under this Chapter.

## **CHAPTER 11. CHEMIGATION**

### **SECTION 48-11-1. License/Certification Required.**

This Title requires any person engaged in the application of chemicals by means of irrigation, within the boundaries of the Reservation of the Omaha Tribe, to be certified as an applicator of Restricted Use Pesticides by the Tribal Environmental Protection Department.

### **SECTION 48-11-2. Permits Required.**

Individuals who intend to apply chemicals by means of irrigation must obtain a permit from the Tribal Environmental Protection Department for each point of injection.

### **SECTION 48-11-3. Application Standards.**

(a) Farm chemicals may be applied through an irrigation system provided that the chemical is suitable for or intended for that method of application, is labeled as such by the manufacturer and the irrigation system is fitted with the anti-pollution devices described in section (c) below to prevent the backflow of farm chemicals or chemigated water into other water supplies or the environment during times of irrigation system failure or equipment shutdown.

(b) Anti-pollution equipment for irrigation systems used for chemigation purposes shall be designed and constructed of materials compatible with farm chemicals and adequately maintained and routinely inspected to insure that they perform as required.

(c) Such a system shall have the following components:

(1) A check valve located in the irrigation pipeline between the irrigation pump and the point of injection into the irrigation pipeline that prevents backflow of the insecticide/water mixture into the well if an unexpected shutdown occurs.

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(2) A vacuum relief valve located between the irrigation pump and the irrigation pipeline check valve which allows air to enter the pipeline, preventing the creation of a vacuum when the water flow stops.

(3) An automatic low pressure drain located on the bottom of the horizontal pipe between the irrigation pump and the irrigation pipeline check valve. Its purpose is to drain any mixture of water and chemical that might leak past the irrigation pipeline check valve away from the irrigation water source. A hose, pipe or similar conduit shall be used to discharge the leakage solution at least twenty feet from the irrigation water source.

(4) An irrigation pipeline inspection port or viewing device located on the pipeline between the irrigation pump and the irrigation pipeline check valve, and situated so the inlet to the low pressure drain can be observed.

(5) Chemical injection line check valve located between the point of chemical injection into the irrigation pipeline and the chemical injection pump. This check valve prevents water flow from the irrigation system into the chemical supply tank when the chemical injection unit is not operating.

(6) An interlock device designed to shut down the injection pump and prevent the pumping of chemicals into the irrigation pipeline after the irrigation pump stops.

(d) All irrigation systems, devices, valves, and other components shall be installed and maintained according to the manufacturer's recommendations to ensure they function properly during chemigation.

(e) During times of normal usage, chemigation equipment shall be periodically calibrated and inspected by the certified applicator to ensure that it functions properly.

### **SECTION 48-11-4. General Conditions.**

Individuals using an irrigation system to apply Restricted Use Pesticides shall monitor their chemigation activity frequently enough so the irrigation system can be shut down should the equipment fail or if meteorological conditions such as wind or rain result in off-target pesticide movement. In addition:

(a) Only certified individuals shall set up and calibrate the use of restricted use pesticides in a chemigation system.

(b) Chemigation applications must be monitored by individuals knowledgeable of the system and having the authority to stop the application.

(c) Chemigation utilizing the "open discharge system" or "furrow irrigation" is prohibited.

## **CHAPTER 12. STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS**

### **SECTION 48-12-1. Pesticide Disposal.**

(a) Applicators using or supervising the use of Restricted Use Pesticides are required to follow all label instructions concerning the disposal of excess or surplus pesticide products.

(b) No person shall transport, store, or dispose of any pesticide in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any river, creek, stream or other waterway in a manner harmful to any wildlife therein.

### **SECTION 48-12-2. Pesticide Container Disposal.**

(a) No person shall transport, store, or dispose of any pesticide container or device in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any river, creek, stream or other waterway in a manner harmful to any wildlife therein.

(b) Applicators using or supervising the use of pesticides are required to follow all label instructions concerning the disposal of pesticide containers.

(c) Applicators are encouraged to recycle pesticide containers and the Restricted Use Pesticide

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Committee will make opportunities to do so available.

## CHAPTER 13. UNLAWFUL ACTS

### SECTION 48-13-1. Unlawful Acts.

It shall be unlawful to:

- (a) Make false or fraudulent claims through any media, misrepresenting the effect of a pesticide or methods to be utilized;
- (b) Make pesticide recommendations or applications inconsistent with the labeling registered with the EPA
- (c) Operate faulty or unsafe pesticide application equipment;
- (d) Operate pesticide application equipment in a faulty, careless, or negligent manner,
- (e) Neglect, or after notice, if notice has been given, refuse to comply with the provisions of this Title or any lawful order of the Tribal Pesticide Officer or the Committee;
- (f) Refuse or neglect to keep and maintain the records required by this Title or to make reports when and as required,
- (g) Make false or fraudulent records, invoices, or reports;
- (h) Use, or supervise the use of a pesticide which is restricted to use by certified applicators without the certification required by this Title or without working under the direct supervision of a certified applicator as described in Chapter 8 of this Title,
- (i) Use fraud or misrepresentation in making application for or renewal of certification;
- (j) Refuse or neglect to comply with any limitations of restrictions on a duly issued certification"
- (k) Use or cause to be used any pesticide in a manner inconsistent with its labeling;
- (l) Aid or abet anyone to evade the provisions of this Title,
- (m) Allow one's certification to be used by another person,
- (n) Make false or misleading statements during an inspection concerning any infestation or infection of pests found on property,
- (o) Impersonate any Federal, State, Tribal or other governmental official,
- (p) Distribute or sell:
  - (1) Any pesticide that is not registered or whose registration has been canceled or suspended, except to the extent that distribution or sale other wise has been authorized by the administrator under FIFRA,
  - (2) Any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration,
  - (3) Any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration,
  - (4) Any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5) of FIFRA
  - (5) Any pesticide which is adulterated or misbranded, or
  - (6) Any device which is misbranded.
  - (7) A Restricted Use Pesticide to an uncertified person.

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(q) Detach, alter, deface or destroy, in part or in whole any labeling required under this Title or FIFRA,

(r) Refuse to:

(1) Prepare, maintain, or submit any records required by or under this Title or Section 19 of FIFRA or,

(2) Submit any reports required by this Title or under Section 5,6,7,8,11, or 19 of FIFRA or,

(3) Allow any entry, inspection, copying of records, or sampling requested by the Tribal Pesticide Officer or the Committee,

(s) Apply pesticides onto any land without the consent of the owner or person in possession thereof, except, for governmental agencies which must abate a public health problem,

(t) Apply pesticides known to be harmful to honeybees on blossoming crops on which bees are working during the period between two hours after sunrise and two hours before sunset, except, in accordance with this and all other applicable laws and regulations, and on property owned or operated by the applicator.

(u) Deny entry after issuance of a written request from the Restricted Use Pesticide Committee or the Tribal Pesticide Officer.

### CHAPTER 14. PENALTIES

#### SECTION 48-14-1. General.

Penalties shall be determined by the Restricted Use Pesticide Committee.

In determining the amount of the penalty, the Committee shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, the gravity of the violation and other factors. Fines may also be promulgated by the Committee in response to specific violations shall be made a part of the Restricted Use Pesticide regulations.

#### SECTION 48-14-2. Civil Penalties

Any individual who fails to comply with any provision of this Title or any rule or regulation promulgated by the Restricted Use Pesticide Committee may be assessed a civil penalty not to exceed fifteen thousand dollars for each offense, and in the case of a continuing violation, each day of the violation shall constitute a separate offense.

#### SECTION 48-14-3. Criminal Penalties.

Any individual willfully violating any provision of this Title or any rule or regulation promulgated by the Restricted Use Pesticide Committee may be guilty of criminal activity. All criminal violations will be referred to the U.S. Environmental Protection Agency for further action.

#### SECTION 48-14-4. Appeals.

Any penalty assessed by the Committee, may be appealed to the Omaha Tribal Court.

### CHAPTER 15. SUSPENSION, REVOCATION, OR MODIFICATION OF CERTIFICATION

#### SECTION 48-15-1. Pesticide Officers Authority.

The foregoing shall not be deemed to limit or restrict the Tribal Pesticide Officer from taking other appropriate action. The Tribal Pesticide Officers authority include, but are not limited to the issuance of cease and desist orders, stop sale orders, stop-use orders, inspect and investigate establishments and applicators, and seize materials applicable to the inspection or investigation.

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### **SECTION 48-15-2. Informal Contact.**

The Tribal Pesticide Officer, may for good cause shown, formally or informally contact any applicator about possible violations of the Title or practices which may result in violations. These contacts are to assist the officer in gathering relevant information and encourage applicators in adhering to practices which promote the proper use of pesticides.

### **SECTION 48-15-3. Investigations**

Investigations by the Tribal Pesticide Officer can be initiated upon the recommendations of the Committee, by his/her findings or upon reports of possible violations received from any individual who resides or works on the Reservation of the Omaha Tribe.

### **SECTION 48-15-4. Warnings.**

The Tribal Pesticide Officer may issue a warning of possible violation(s) by doing so in written form to the affected individual.

The warning will

- (a) Explain the basis and/or purpose of the concern and
- (b) Explain actions the Tribal Pesticide Officer may take if the applicator does not take positive corrective action to comply with the provisions of this Title.

The issuance of a warning and opportunity to cure is not a prerequisite to taking an enforcement action under this Title.

### **SECTION 48-15-5. Certification Suspension and Revocation**

The Tribal Pesticide Officer may suspend or revoke any applicator's certification, pending further inquiry, for up to ten days, and schedule a hearing before the Committee to rule on the incident. Acts which constitute grounds for suspension and/or revocation of an applicator's certification to apply pesticides shall be determined by the Restricted Use Pesticide Committee but shall include, at a minimum, the misuse of a pesticide or falsification of any records required to be maintained.

If the Committee upon further investigation and further consideration of the facts, finds that the holder of an applicator's certificate or dealers license is not in compliance with this Title or any provisions of FIFRA, it may revoke or modify the applicator's certificate or dealers license, if the situation so warrants, and assess appropriate penalties as clearly outlined in the Tribal Pesticide Enforcement Policy, or refer the information to the Tribal Court for appropriate proceedings.

### **SECTION 48-15-6. Hearings.**

Such hearing shall be held within ten days of the suspension before the Environmental Protection Commissioner of the Omaha Tribe, in such a place as the Environmental Protection Commissioner shall determine. Informal rules of evidence shall apply.

## **CHAPTER 16. TOP SALE, USE OR REMOVAL**

Whenever any pesticide or device is found by the Tribal Pesticide Officer and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Title, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provision, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Tribal Pesticide Officer may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

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## CHAPTER 17. SEVERABILITY

### SECTION 48-17-1. Severability.

If any provision of this Code is held invalid, the invalidity shall not affect other provisions or applications of this Title which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Title are severable.

## CHAPTER 18. AMENDMENTS

### SECTION 48-18-1. Amendments.

This Title can be amended at any time by the Omaha Tribal Council.

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