

NOTICE

This notice is being posted February 8, 2017, to request written comments for the following proposed Ordinance (see attached):

Nez Perce Tribe Agricultural Burn Registration Fee Ordinance

STATEMENT OF PURPOSE: Fees collected pursuant to this Nez Perce Tribe Agricultural Burn Registration Fee Ordinance will offset the costs associated with administering the agricultural burn permit program of the Nez Perce Federal Implementation Plan on the Nez Perce Reservation.

WRITTEN COMMENT PERIOD:

The Nez Perce Tribe's Environmental Restoration and Waste Management (ERWM) Air Quality Program will be accepting written comments on the proposed Ordinance. Please submit written comments to Julie Simpson, ERWM-Air Quality Program, P.O. Box 365, Lapwai, ID, 83540, email to airquality@nezperce.org, fax to 208-843-7411, or hand deliver to the ERWM office at the Herman Reuben building, 109 Lolo Street, Lapwai.

The deadline for receipt and consideration of such comments is March 10, 2017, at 4:30 p.m.

Nez Perce Tribe Agricultural Burn Registration Fee Ordinance

1. Background

- a. To ensure that basic air quality protection is in place to protect health and welfare on Indian reservations in the Pacific Northwest, Federal Implementation Plans under the Clean Air Act for 39 Indian reservations in Idaho, Oregon, and Washington were adopted in 2005 (70 Fed. Reg. 18074, April 8, 2005) following notice and comment rulemaking. (67 Fed. Reg. 11748, March 15, 2002; 67 Fed. Reg. 51802, August 9, 2002). These Federal Implementation Plans are also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR).
- b. The Federal Implementation Plan for the Nez Perce Reservation (Nez Perce FIP) is set forth at 40 Code of Federal Regulations (CFR) §§49.10401 - 49.10411. The Nez Perce FIP became effective on June 7, 2005.
- c. On June 27, 2005, pursuant to 40 CFR §49.122, the Environmental Protection Agency (EPA) Region 10 and the Nez Perce Tribe entered into a Partial Delegation of Administrative Authority (Delegation Agreement) to carry out certain day-to-day activities associated with administration of the Nez Perce FIP. This delegation became effective upon announcement in the Federal Register on September 16, 2005 (70 Fed. Reg. 54638). Since 2005, the Tribe

has implemented the Nez Perce FIP as delegated, including FARR §49.131 General rule for open burning and §49.133 Rule for agricultural burning permits. EPA maintains authority for enforcing the Nez Perce FIP.

- d. The Nez Perce Tribe's Air Quality Program and its administration of the Nez Perce FIP have served as a model for the state of Idaho's approach to agricultural burning in its air quality program. The Tribe's Air Quality Program has received awards for its administration of the Nez Perce FIP, and the Tribe's program has served as model for other tribes in addressing air quality.
- e. The states of Idaho, Washington, and Oregon have all adopted fee structures for agricultural burning.
- f. Although the Nez Perce Tribe receives funding from EPA to administer the Nez Perce FIP as delegated, EPA has reduced funding over recent years. As set forth in the Delegation Agreement, the Tribe may promulgate regulations authorizing the collection of fees to offset the cost of administration of this program, with the fees being used for the sole purpose of program income to the Nez Perce Tribe's Air Quality Program.
- g. The Nez Perce Tribe, and many within the regulated community that the Tribe serves, have urged EPA to continue to fully and adequately fund this program.
- h. As of fiscal year 2017, reductions in EPA funding necessitate the collection of agricultural burn registration fees to maintain the basic-level administration of the EPA/Nez Perce Tribe agricultural burn permit program that serves the regulated community and protects health and welfare.

2. Purpose

- a. Fees collected pursuant to this Nez Perce Tribe Agricultural Burn Registration Fee Ordinance will offset the costs associated with administering the agricultural burn permit program of the Nez Perce FIP on the Nez Perce Reservation.

3. General applicability

- a. This ordinance applies to any person who applies for an EPA/Nez Perce Reservation Agricultural Burn Permit.

4. Definition of terms

- a. The definition of terms contained in FARR §49.123 General Provisions are incorporated into this ordinance by reference, including the following:
 - i. Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.
 - ii. Agricultural burning means the burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

5. Agricultural burn registration fee calculation

- a. The Nez Perce Tribe Agricultural Burn Registration Fee will be calculated based on the total acres and total piles that the applicant identifies for burning in the EPA/Nez Perce Reservation Air Quality Permit Application: Agricultural Burn form and the fee schedule below.

6. Payment of agricultural burn registration fees

- a. The registration fee shall be paid to the Nez Perce Tribe Air Quality Program in its entirety at least one (1) business day prior to the proposed burn date.

- b. The registration fee shall be deposited in a separate account in the Nez Perce Tribe Finance Department and shall only be used to cover costs of administering the agricultural burn permit program of the Nez Perce FIP. Disbursement of funds from this account shall be authorized by the designated Nez Perce Tribe Air Quality Program Coordinator solely for the purpose of supporting the agricultural burn permit program of the Nez Perce FIP.

7. Agricultural burn registration fee schedule

- a. Consistent with the purpose of this ordinance, the Nez Perce Tribe will charge a reasonable agricultural burn registration fee.
- b. A reasonable agricultural burn registration fee consists of a minimum fee plus any applicable variable fee.
 - i. Minimum fee. The minimum fee includes burning of the base number of acres or piles published in the fee ordinance.
 - ii. Variable fee. Field burning and pile burning permits allowing the applicant to burn more acres or piles than the base included in the minimum fee require an additional per acre or per pile fee.
- c. This ordinance provides the following minimum and variable agricultural burn registration fee schedule (fee schedule), starting in the calendar year 2017:

Fee	Minimum Fee	Variable Fee
Field burning	\$37.50 for the first 10 acres	\$3.75 per acre
Pile burning	\$37.50	\$0

- d. The fee schedule shown in c. of this subsection will remain in place until adjusted pursuant to the process in sections 10 and 11 of this ordinance.
- e. A copy of the fee schedule shall be marked and designated as such, shall be publicly available, and shall be posted in the Nez Perce Tribe Air Quality Program Office.

8. Refunds

- a. Applicants may only receive a refund for the portion of the variable fee paid for the acres not burned.
- b. Due to the cost of processing, refunds of less than twenty-five dollars (\$25) will not be issued.

9. Agricultural burning advisory team

- a. The Nez Perce Tribe hereby authorizes the Nez Perce Tribe Air Quality Program to work with an agricultural burning advisory team (advisory team) to assist the Air Quality Program in reviewing the fee schedule.
- b. The Nez Perce Tribe Air Quality Program will assemble an advisory team consisting of representatives from agricultural groups and the Nez Perce Tribe’s Land Services Division to annually review the fee schedule.

10. Establishing new fee schedules. The Nez Perce Tribe Air Quality Program will work with the advisory team to review the fee schedule once a year using the process outlined in this section. Beginning November 1 of each year, the process for examining the fee schedule will include the following:

- a. The Nez Perce Tribe Air Quality Program will submit to the advisory team, at a minimum, the following information:
 - i. a summary of the fiscal year (October 1 – September 30) costs of the agricultural burn permit program,

- ii. a summary of the fiscal year EPA funding provided to the Nez Perce Tribe to administer the agricultural burn permit program, and
 - iii. the total annual agricultural acreage burned under approved EPA/Nez Perce Tribe FARR permits on the Nez Perce Reservation for the previous five calendar years.
- b. The Nez Perce Tribe Air Quality Program will notify advisory team members of the time, date, location, and agenda for the advisory team meeting.
- c. Based on the information provided by the Nez Perce Tribe Air Quality Program under a. of this subsection, the advisory team and the Nez Perce Tribe Air Quality Program will examine if the fee schedule should be revised to ensure sufficient annual funding to maintain the needed administrative capacity of the EPA/Nez Perce Tribe agricultural burn permit program.
- d. Considering the recommendations of the advisory team, the Nez Perce Tribe Air Quality Program will determine if the fee schedule needs to be adjusted.
- e. If the Nez Perce Tribe Air Quality Program determines that the fee schedule needs to be adjusted, that adjustment will be reviewed and adopted by the Nez Perce Tribe no later than February 16.

11. Point of Contact.

- a. Any questions concerning the implementation of this ordinance shall be directed to the Nez Perce Tribe's Air Quality Program Coordinator.