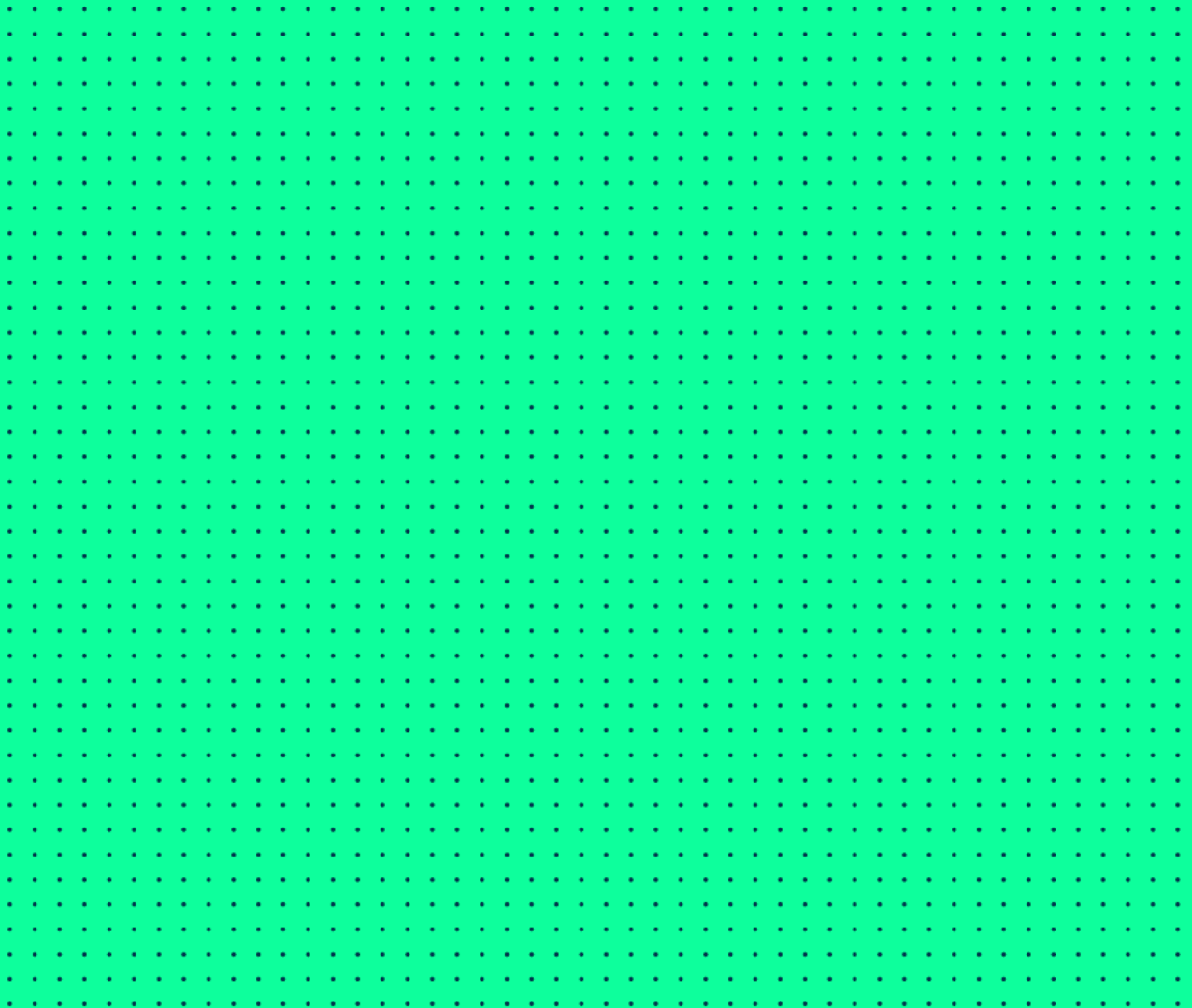




Environment Protection Authority

Pesticides Regulation 2017: Quality Assurance and Stewardship Program Approval Policy

September 2023



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ISBN 978 1 922963 36 9

EPA 2023P4461

September 2023

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This policy outlines the EPA's criteria and process for assessing and approving programs under clause 31(1) of the Pesticides Regulation 2017.

1. Overview

Introduction and purpose of this policy

The Environment Protection Authority (EPA) administers the *Pesticides Act 1999* (the Act) to control the use of pesticides in NSW and reduce their risk to human health, the environment, property, industry and trade. The Pesticides Regulation 2017 (the Regulation) supports the aims of the Act by setting out requirements for record-keeping, training, licensing and the notification of some pesticide uses.

Mandatory training helps prevent mistakes being made when pesticides are used, and is one of the most effective ways of protecting the community, the environment and the people who use pesticides regularly. The Regulation requires training to be undertaken every five years, but provides an alternative for people who hold a recognised qualification and participate in an EPA-approved quality assurance or stewardship program relating to the use of pesticides.

The *Quality Assurance and Stewardship Program Approval Policy* (the policy) outlines the EPA's process for assessing programs for approval and the general conditions that it may attach to an approval. The policy also documents the criteria against which the assessment is to be completed. This is to ensure the process is undertaken in a consistent and transparent manner. The policy is a guide to the EPA's decision-making process and does not fetter the EPA's discretion to approve a program or the conditions it may attach to an approval.

The intended audience for the policy includes pesticide users working within a business that is a member of an EPA-approved quality assurance or stewardship program; members and operators of those programs; and anyone with an interest in seeking approval for a program. The EPA will use the policy to guide decision-making about approving programs under clause 31(1)(c) of the Regulation.

Definitions

Approval: an approval made by the EPA under clause 31(1)(c) of the Regulation.

'Domestic like' use exemption: an exemption under clause 4 of the Regulation for the use of small amounts of pesticides that are widely available to the public, in the home and garden.

EPA-approved program: a program that has been assessed in accordance with the policy and has been approved by the EPA under clause 31(1)(c) of the Regulation.

Member: an individual or business that is registered as part of an EPA-approved program.

Pesticide user: a person who uses pesticides in the course of their work or business and who is not required to hold a licence under the Act. Generally, only persons who provide commercial pest control services using pesticides are required to hold a licence.

Program: a quality assurance program or stewardship program relating to the use of pesticides.

Quality assurance program: a formalised scheme of planned and systematic activities implemented within a quality system, that can demonstrate that products or services are produced in a way that fulfils defined quality characteristics. Quality characteristics must include components that ensure responsible pesticide use in the course of producing or delivering a product or service.

Stewardship program: a formalised scheme that entails conducting, supervising or managing activities that include the safe and responsible use of pesticides. A stewardship program can be directly concerned with responsible pesticide use as a direct outcome of the scheme without this necessarily being linked to the production of particular goods or services.

Legislation

Most unlicensed pesticide users in NSW are required to complete training in chemical use at Australian Qualifications Framework Level 3 (AQF 3), unless subject to a 'domestic like' (small) use exemption.

The Regulation provides two pathways for maintaining competency after this initial training. An unlicensed pesticide user is considered qualified to use a pesticide if they:

- renew their training every five years by completing a short refresher course leading to a recognised qualification (see cl 31(1)(b) of the Regulation)

or

- hold a recognised qualification issued other than within the last five years and, within the last five years, have participated in an EPA-approved program and comply with any conditions specified by the EPA in relation to that program (see cl 31(1)(c) of the Regulation).

Note: There are separate qualification requirements if the pesticide is subject to a pesticide control order that specifies an alternative training requirement, or if the use of the pesticide involves loading or mixing for the purposes of aerial application.

If a pesticide user is not a member of an EPA-approved program, or uses pesticides for work or business not directly associated with an EPA-approved program, the requirement to complete retraining every five years applies. If a pesticide user works for more than one organisation and only one of these organisations is a member of an EPA-approved program, the five-yearly retraining requirement applies for pesticide use outside that organisation.

If the EPA determines or reasonably suspects that a current member of an EPA-approved program is using pesticides in an environmentally unsatisfactory manner, it may issue them with a notice to take preventive action under s 24 of the Act. The notice may include a requirement for a pesticide user to undertake retraining.

Section 23 of the Act defines an 'environmentally unsatisfactory manner' to include use that has led to or is likely to lead to a contravention of any provision of the Act or Regulation, or which is causing or has caused pesticide pollution.

2. Criteria for approval

Programs eligible for EPA approval

A program is considered eligible for approval if it has appropriate content prescribing competent pesticide use, systems to demonstrate participant compliance with its requirements, and appropriate program governance arrangements.

Criteria used to assess programs

The EPA uses specific criteria to assess programs. The aim is to ensure that, by following an approved program's requirements relating to pesticide use, program members will maintain the knowledge and skills they need to comply with the requirements of the Act and the Regulation.

In general terms, the Act and Regulation have the intention of ensuring:

- off-target harm is avoided (including events such as spray drift)
- only registered pesticides are used
- products are used (and mixed) in accordance with the approved label or permit
- pesticides are stored in containers with the approved label

- restricted pesticides are only used by authorised persons
- pesticide use is recorded and the records kept.

The EPA will assess three main aspects of the program:

- content prescribing competence in pesticide use
- demonstration of participant compliance
- governance of the program.

Content prescribing competence in pesticide use

The EPA will assess a program to determine whether the scope of the program is proportionate to the expected types and levels of pesticide use within that particular industry.

If the EPA approves a program, it may include a condition that the exemption from retraining only applies to the types of pesticide use that occur on premises subject to that program.

The EPA will have regard to whether the program contains the following elements:

1. **Pesticide use record-keeping requirements.** Pesticide users must be shown how to comply with the record-keeping requirements of the Regulation. Requirements can be communicated at the individual or organisational level.
2. **Product use requirements.** Products should be used in accordance with labels or permits approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA). Restricted products should be used only by authorised persons.
3. **Risk assessment and minimisation requirements.** These include the ability to identify exposure pathways, prevent off-target harm, assess weather conditions and avoid spray drift.
4. **User capability requirements.** The training should maintain the knowledge and skills in responsible pesticide use that users have gained through initial training. This can include the ability to correct product choices, mix products properly and use application equipment correctly. Capability requirements may be specified at an individual or organisational level.
5. **Storage and handling requirements.** These relate to the appropriate storage and handling of pesticides.

Examples of program elements that might be approved by the EPA are:

- Keep complete records of each instance of pesticide use.
- Store products in their original containers.
- Workers handling pesticides must have evidence of competence, shown by completing records or declarations.
- Plant protection products must be ones registered for use by the APVMA and used in accordance with label directions.

Demonstration of compliance

The program must have a documented process in place for members to reliably demonstrate compliance with its requirements. This should be systematic and verifiable.

The program must also have systems in place for corrective action if non-compliances are identified.

Examples of systems that might be in place are:

- assessment by independent auditors, either scheduled or unscheduled
- periodic and recorded standardised self-assessments.

Governance of the program

The program must have a system in place to ensure it is operated in a consistent and transparent way. This includes processes for designing and adopting standards, providing a framework for certification bodies, consulting participants and other interested parties on revisions, and accommodating new and emerging issues that may affect the industry.

The program should be operated by an organisation or person with clearly defined responsibilities for its operation. Examples of governance structures may include:

- an independent board
- technical committees
- specialist committees.

3. Procedure for being assessed

Process for assessing programs

Eligible programs will be assessed against the criteria laid out in this policy. Where publicly available documentation is not sufficient to establish whether a program meets the criteria, the program operator(s) will be contacted and asked to provide this information. The EPA must have sufficient evidence to assess the program against the criteria before a decision for approval can be made.

Programs approved by the EPA under clause 31(1)(c) of the Regulation will be published by notice in the *NSW Government Gazette*. Programs may be approved subject to conditions, including those outlined in this policy, that will also be published in the *Gazette*. A condition of an approval may include that the approval only applies to particular modules or components of a quality assurance program, not to the program as a whole.

Application to have a program assessed

An operator of a relevant program may contact the EPA to request an assessment of their program or the EPA may identify a prospective program proactively. Newly developed programs can be assessed by the EPA as they are implemented

Applications to have a program assessed should be emailed to info@epa.nsw.gov.au.

There is no standard form but applications should include documentation (or links to online documentation) to support the case for approval with reference to the criteria outlined in section 2 of this policy. Applicants will be informed of the outcome of the assessment application.

Fees

There are no fees involved in the assessment of programs under this policy.

Processing time

The processing time for assessments will vary depending on the program and the availability of information. The EPA will try to complete assessments within a month of all necessary information – including any additional information it asks for – being provided.

Application for reassessment

If a program has already been assessed by the EPA and deemed not to meet the criteria, and the operators of the program believe this assessment is not correct, the operators may contact the EPA to discuss a reassessment. This also applies to programs that have changed their content

since they were assessed by the EPA. Applicants need to provide evidence to support this reassessment.

Consultation

If the EPA proactively identifies a program that it considers a suitable candidate for approval, the EPA will contact local operators of the program to advise that the program is being considered for approval under the Regulation. The EPA may request further information from the operator to help with the assessment.

After a program has been assessed and deemed to meet the criteria, the program operators will be informed in writing of the outcome of the EPA's assessment and given an opportunity to express any views or concerns about the approval and/or any conditions that may be attached.

The final notice will be published in the NSW *Government Gazette*, in accordance with the Regulation.

The EPA maintains a list of EPA-approved programs on its website.

Operators of EPA-approved programs, pesticide users and the wider community may contact the EPA with any questions about the process at regulatory.policy@epa.nsw.gov.au.

Review of approvals

The EPA may review an approval at any time. A review may arise from the EPA initiating a general audit of the content of EPA-approved programs or through the EPA becoming aware that a specific EPA-approved program may no longer meet the criteria required by this policy.

Should the EPA become aware that an EPA-approved program no longer meets the criteria for approval:

1. The EPA will issue the program operator with a notice of intention. The notice will:
 - a. describe the issue the EPA has identified
 - b. ask the program operator for comment
 - c. ask the program operator to outline the actions they will take to rectify the issue and the time frame within which these actions will be taken
 - d. require the program operator to provide their response to the EPA within the time frame specified in the notice.
2. The EPA will take into consideration the response received from the program operator and decide whether to revoke or retain the approval. The program operator will be notified in writing of the decision.
3. Where actions cannot be agreed on or are not implemented within an agreed time frame, the EPA may post on its website notice of its intention to revoke an approval. The EPA may use other means as needed to ensure this intention is communicated to members.

Revocation of an approval will not be retrospective and the EPA will allow a reasonable time frame for affected members to access training to satisfy clause 31(1)(c) of the Regulation.

4. Review of this policy

The EPA will review the operation of this policy after May 2026.

The EPA may also make updates to this policy outside of that review, should the need arise.

5. References

Pesticides Regulation 2017 – <https://www.legislation.nsw.gov.au/#/view/regulation/2017/448>

EPA pesticides training web page – <http://www.epa.nsw.gov.au/your-environment/pesticides/compulsory-training-pesticides>