

[Published in Government Gazette No. 66, 21 May 2010, pp 2239-2241. Additionally, amendments under Pesticide Control (Avicide Products) Amendment Order 2010, published in Government Gazette No. 140, 24 December 2010, pp 6166 – 6167, have been incorporated.]

PESTICIDES ACT 1999 – PESTICIDE CONTROL ORDER UNDER SECTION 38

Name

1. This Order is to be known as the Pesticide Control (Avicide Products) Order 2010.

Commencement

2. This Order commences on publication in the NSW Government Gazette, except for clause 9(c)(ii) which commences on 1 July 2010 or 28 days after the Order is published in the NSW Government Gazette, whichever is later.

Authority for Order

3. This Order is made by the Environment Protection Authority with the approval of the Minister for Climate Change and the Environment under Part 4 of the Pesticides Act 1999.

Objects

4. The objects of this Order are to: –
 - (a) Authorise those persons described in condition 8 to use 4-aminopyridine, alphachloralose and fenthion products that are approved by the APVMA for the control of birds in NSW; and
 - (b) Specify the manner in which 4-aminopyridine, alphachloralose and fenthion bird control products may be used in NSW.

Background

5. A chemical product used for the purpose of bird control that contains 4-aminopyridine or alphachloralose or fenthion has been declared to be a “restricted chemical product” as set out in Regulation 45 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth).

Section 94 of the Agvet Code provides that “A person must not, without reasonable excuse, supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction”.

In NSW section 4 of the *Pesticides Act 1999* provides that a “restricted pesticide” means a pesticide that is a restricted chemical product within the meaning of the Agvet Code. Section 17 of the Pesticides Act provides that a person must not use or possess a restricted pesticide unless authorised to do so by a certificate of competency or a pesticide control order.

Application

6. This Order authorises the use of 4-aminopyridine, alphachloralose or fenthion products that are approved for use on birds in NSW by the APVMA, subject to the conditions specified in this Order.

Definitions

7. In this Order –

4-aminopyridine product means any product that contains 4-aminopyridine as its only active constituent, has been registered by the APVMA and approved, by way of label instruction or APVMA permit, for the control of birds in NSW. It also includes any bait material produced from the use of such a product.

Agvet Code means the Code applying because of section 5 of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*.

Alphachloralose product means any product that contains alphachloralose as its only active constituent, has been registered by the APVMA and approved, by way of label instruction or APVMA permit, for the control of birds in NSW. It also includes any bait material produced from the use of such a product.

Apply means apply, spread or disperse the pesticide.

APVMA means the Agricultural Pesticides and Veterinary Medicines Authority established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth.

APVMA permit means a permit granted by the APVMA under Part 7 of the Agvet Code and in force.

Avicide product means collectively a 4-aminopyridine product, an alphachloralose product and a fenthion product.

Bait material means material such as cereal grain or eggs or bread or meat or any other bait material specified on the approved label for a 4-aminopyridine or alphachloralose product or in an APVMA permit authorising the use of the avicide product for the control of birds.

Bird control officer means a person who:

- (a) holds a current certificate of completion, or statement of attainment, issued by DII or another Registered Training Organisation on completion of the training and assessment components of the Vertebrate Pest Management course delivered by it; and
- (b) holds at least one of the following:
 - (i) a current certificate of completion issued by PestCert Limited (ACN 115 850 872) on completion of the bird management training course delivered by it; or
 - (ii) a current certificate of completion or statement of attainment issued by DII on completion of an avicide training course delivered by it; or
 - (iii) a current certificate of completion or statement of attainment issued by a Registered Training Organisation on completion of a DECCW approved training course delivered by, or on behalf of, the Registered Training Organisation that gives specifically contextualised training in pest bird management including training on how to identify pest birds, know and understand their behaviour, assess how to manage them and to lawfully use an avicide product to control them; and
- (c) holds a current certificate of completion or statement of attainment on completion of the training and assessment components of a Chemical Accreditation training program assessed at Australian Qualifications Framework levels 3 and 4 and that has been issued by a Registered Training Organisation in the previous 5 years in recognition of the person's satisfactory achievement of the level 4 training competencies covered by the program; and
- (d) is a member of staff of a Livestock Health and Pest Authority, DII, DECCW, or other NSW public authority and is currently employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* by the Government Service to enable that NSW public authority to exercise its functions.

DECCW means the Department of Environment, Climate Change and Water (NSW).

DII means the Department of Industry and Investment (NSW).

Fenthion product means any product that contains fenthion as its only active constituent, has been registered by the APVMA and approved, by way of label instruction or APVMA permit, for the control of birds in NSW.

Livestock Health and Pest Authority means a livestock health and pest authority constituted under the *Rural Lands Protection Act 1998*.

Registered Training Organisation has the same meaning as in the *Vocational Education and Training Act 2005* (NSW).

Statement of attainment has the same meaning as in the *Vocational Education and Training Act 2005* (NSW)

Use means “possession” and “use” as each of those terms are defined in the *Pesticides Act 1999*.

Persons authorised

8. Only the following persons are authorised to use, subject to clause 10, fenthion product:

- (a) Bird Control Officers;
- (b) A person applying the fenthion product in connection with agricultural operations or forestry operations where that person applies the fenthion product:
 - (i) by means of hand held or hand powered equipment;
 - (ii) on no more than 12 days in the previous 12 months and on no more than 4 days in the previous month; and
 - (iii) under the direct supervision of a Bird Control Officer; or
- (c) A person who:
 - (i) holds a current certificate of competency or recognised qualification (within the meaning of Part 9.1 of the *Occupational Health and Safety Regulation 2001*) in relation to the kind of work referred to in clause 11 (Application of pesticides) of the Schedule to clause 266 of that Regulation; and
 - (ii) holds either:
 - (A) a current certificate of completion issued by PestCert Limited (ACN 115 850 872) on completion of the bird management training course delivered by it; or
 - (B) a current certificate of completion or statement of attainment issued by a Registered Training Organisation on completion of a DECCW approved training course delivered by, or on behalf of, the Registered Training Organisation that gives specifically contextualised training in pest bird management including training on how to identify pest birds, know and understand their behaviour, assess how to manage them and to lawfully use an avicide product to control them.

9. Only the following persons are authorised to use, subject to clause 10, 4-aminopyridine product and alphachloralose product:

- (a) Bird Control Officers;
- (b) A person applying the 4-aminopyridine product or alphachloralose product in connection with agricultural operations or forestry operations where that person applies the 4-aminopyridine product or alphachloralose product:
 - (i) by means of hand held or hand powered equipment;
 - (ii) on no more than 12 days in the previous 12 months and on no more than 4 days in the previous month; and
 - (iii) under the direct supervision of a Bird Control Officer; or
- (c) A person who:
 - (i) holds a current certificate of competency or recognised qualification (within the meaning of Part 9.1 of the *Occupational Health and Safety Regulation 2001*) in relation to the kind of work referred to in clause 11 (Application of pesticides) of the Schedule to clause 266 of that Regulation; and
 - (iii) holds either:
 - (A) a current certificate of completion issued by PestCert Limited (ACN 115 850 872) on completion of the bird management training course delivered by it; or
 - (B) a current certificate of completion or statement of attainment issued by a Registered Training Organisation on completion of a DECCW approved training course delivered by, or on behalf of, the Registered Training Organisation that gives specifically contextualised training in pest bird management including training on how to identify pest birds, know and understand their behaviour, assess how to manage them and to lawfully use an avicide product to control them.

Conditions on the use of Avicide Products

10. A person is authorised to use avicide products under clauses 8 and 9 above only if:

- (a) The approved label for the particular avicide product, or an APVMA permit, authorises the use of that avicide product for the control of birds in NSW;
- (b) The use is in accordance with:
 - (i) the instructions on the approved label for the particular avicide product; or
 - (ii) an APVMA permit that has been granted for the use of that avicide product, including any conditions of that permit; and
- (c) That person has obtained all relevant consents, licences or approvals necessary for each use of the avicide product, and the consequences of that use, under the legislation of NSW.

Note:

For example, the person using the avicide product must obtain a consent to harm bird species (regardless of whether it is native or protected fauna) under section 110 of the *National Parks and Wildlife Act 1974*. The person might also need to obtain a licence to harm, possess and dispose of a native bird species under section 120 of that Act and/or other consents, licences or approvals under the National Parks and Wildlife Act and/or under other legislation.

Application forms for consents and licences under the National Parks and Wildlife Act can be obtained from the Wildlife Licensing & Management Unit of the Department of Environment, Climate Change and Water. Contact Phone No: (02)9585 6406 or Fax No: (02) 9585 6401.

General Notes

Words used in this Order have the same meaning as in the Pesticides Act 1999, unless otherwise defined in this Order.

A person must not contravene this Order – maximum penalty \$120 000 in the case of a corporation and \$60 000 in the case of an individual.

LISA CORBYN
**Director-General of the
Department of Environment,
Climate Change and Water (on behalf of the
Environment Protection Authority)**

FRANK SARTOR MP
**Minister for Climate Change and the
Environment**