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PESTICIDES ACT 1999 – PESTICIDE CONTROL ORDER UNDER SECTION 38

Name

1. This Order is to be known as the Pesticide Control (Acrolein) Order 2016.

Commencement

2. This Order commences on publication in the NSW Government Gazette.

Authority for Order

3. This Order is made by the Environment Protection Authority with the approval of the Minister for 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 clause 8 to use an acrolein product.
 - (b) Specify the manner in which acrolein products may be used in NSW.

Background

Restricted chemical products/restricted pesticides

5. A chemical product containing acrolein has been declared to be a “restricted chemical product” under Regulation 45 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* of the Commonwealth.

Section 94 of the Agvet Code provides that “A person must not 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 1999* provides that a person must not use or possess a restricted pesticide unless authorised to do so by a restricted pesticide authorisation or a pesticide control order.

Application

6. This Order applies to acrolein products being used, subject to conditions as specified in this Order.

Definitions

7. In this Order -

Acrolein product means the registered agricultural chemical product Magnacide H Herbicide (APVMA Product Registration Number 45654) and any other product registered by the APVMA that contains acrolein as its only active constituent and that is to be used for the control of submersed weeds in irrigation systems.

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

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

EPA means the Environment Protection Authority (NSW).

Irrigation Company means only the following companies: Jemalong Irrigation Limited; Murray Irrigation Limited; Murrumbidgee Irrigation Limited and West Corrgan Private Irrigation District.

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

Persons authorised

8. A person is authorised to use acrolein products, subject to condition 9, if that person holds accreditation for the training requirements specified under Schedule 1 of this Order and is:
- (a) an employee of Baker Petrolite or Alligare Australia subject to the conditions specified under Schedule 1 of this Order; or
 - (b) an employee of an Irrigation Company.

Conditions on the use of Acrolein Products

9. A person must only use acrolein products in accordance with:
- (a) the instructions on an APVMA approved label of an acrolein product; or
 - (b) directions of an APVMA permit issued for the use of an acrolein product.

Notes

Words used in an 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.

This pesticide control order will remain in force until it is revoked.

BARRY BUFFIER AM
Chair and CEO
Environment Protection Authority

MARK SPEAKMAN MP
Minister for the Environment

Schedule 1

Training Requirements for users of Acrolein Products

1. Mandatory training required by the regulations of Pesticides Act 1999

The Regulations of the Pesticides Act 1999 require that commercial users of pesticides must hold a licence or a prescribed qualification and be re-assessed every five years.

1.1 A person before using an acrolein product must:

- (a) be trained and hold accreditation at competency level AQF3 in accordance with the units of competency that are approved under clause 9 of the *Pesticides Regulation 2009*, and
- (b) not use an acrolein product unless they hold a current AQF3 qualification, and
- (c) have current accreditation for the additional training requirements that are specified under condition 2 of this Schedule.

2. Additional training requirements for users of Acrolein Products

2.1 A person cannot use acrolein products in NSW unless they have received accreditation in the Magnacide H Herbicide Safety and Application training program provided by Baker Petrolite and Alligare Australia.

2.2 A person must successfully complete the Magnacide H Herbicide Safety and Application training program before using acrolein.

2.3 Accreditation can only be given for a maximum of 3 years. Where a person requires ongoing use of acrolein they must obtain reaccreditation before their accreditation is due to expire.

2.4 This training is in addition to the training prescribed in condition 1 of this Schedule.

3. Responsibilities of Baker Petrolite and Alligare Australia

3.1 Baker Petrolite and Alligare Australia must provide training to all persons wanting to use an acrolein product and determine that person is competent before use is permitted. The training must:

- (a) include practical and theory exams to determine whether a person is competent to use an acrolein product and be issued with a certificate on completion. The practical exam must require a person to demonstrate how to set up, use and dismantle acrolein application equipment. The theory exam must comprise multiple choice and short answer sections and requires a person to demonstrate their general knowledge in how to use acrolein products, what legislative constraints apply and what needs to be done if there is an accident involving acrolein products, and
- (b) provide reaccreditation training where a person has an ongoing need for use of acrolein prior to the 3 year expiry date on their certificate.

3.2 Baker Petrolite and Alligare Australia must not issue accreditation to a person unless that person has demonstrated sufficient knowledge and competence in how to use Magnacide H Herbicide

and acrolein application equipment. A person is determined as being competent if that person has demonstrated that they can, unassisted, set up, use and dismantle acrolein application equipment and obtained an 80% or greater mark in the theory exam provided by Baker Petrolite or Alligare Australia.

- 3.3 Baker Petrolite must modify the Magnacide H Herbicide Application and Safety Manual upon request of the EPA where the EPA determines modifications are required to keep them consistent with requirements of both State and Commonwealth legislation.

4. **Responsibilities of the EPA**

NSW EPA is to evaluate the training program provided by Baker Petrolite and Alligare Australia every 5 years or whenever required to ensure that training meets both State and Commonwealth legislative requirements.