

PESTICIDES REGULATION 2017 (NSW)

Quality Assurance and Stewardship Program Approval Policy

November 2017



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Revision history

| Version | Date | Approved by | Amendment notes | Publication number |
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| 1.1 | 2/11/2017 | EPA Board | - | EPA 2017P0343 |

This is an internal policy document which may be subject to revision without notice. Readers should ensure they are using the latest version.

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 mandatory pesticide 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, trade and the people who use pesticides regularly. The Regulation has introduced an alternative to five yearly retraining for people who use pesticides in the course of their work and work within a business which participates in an EPA approved quality assurance or stewardship program. This alternative only applies when the pesticide use is undertaken for work or a business directly associated with the EPA-approved program.

The Quality Assurance and Stewardship Program Approval Policy (the Policy) outlines the EPA's process for assessing programs for approval. It also documents the criteria against which the assessment is 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 as to whether to approve a program.

The intended audiences for the Policy include pesticide users working within a business that is a member of an EPA-approved program, current members of those programs, the operators of those programs and any parties with an interest in seeking approval for a program. This Policy is used by the EPA to guide decision making with respect to the approval of programs against clause 31(1)(c) of the Regulation.

Definitions

EPA-approved program – a program that has been assessed in accordance with the Policy and has been approved by the EPA.

Member – The individual or business that is registered as part of the EPA-approved program.

Pesticide user – a person that uses pesticides in the course of their work or business and does not meet the criteria that require them to hold any of the licences under the Act and Regulation.

Program – a quality assurance or stewardship program (that may or may not have been approved by the EPA).

Quality assurance program - a quality assurance program is 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 fulfills 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 stewardship program is a formalised scheme that entails conducting, supervising, or managing activities that includes 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.

The Act - the *Pesticides Act 1999 (NSW)* as in force from time to time.

The Regulation - the *Pesticides Regulation 2017 (NSW)* as in force from time to time.

Legislation

Historically, most Pesticide users in NSW have been required to complete training in chemical use at Australian Qualifications Framework Level 3 (AQF 3), unless subject to a small use exemption. To maintain competency after this initial training, Pesticide users have been required to renew their training by completing a short refresher course every five years.

Since 1 September 2017, the Regulation has maintained the requirement for Pesticide users to complete initial training at the AQF3 level, however it now provides two pathways for maintaining competency after this stage. Under Clause 31(1) of the Regulation a Pesticide user is now considered qualified to use a pesticide if they:

- Hold a recognised qualification issued within the last five years (as per the requirements of the *Pesticides Regulation 2009*) (see cl 31(1)(b) of the Regulation) or
- Hold a recognised qualification issued other than within the last five years and they also participate in an EPA-approved program (see cl 31 (1)(c) of the Regulation)

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

For pesticide users that are not members of EPA-approved programs, or who use pesticides for work or business not directly associated with the EPA-approved program, the requirement

to complete retraining every five years still applies. For example, if a person works for multiple organisations, and only one of these is a member of an EPA-approved program, the five yearly re-training requirement is still applicable for pesticide use outside that organisation.

If an EPA enforcement officer determines or reasonably suspects a current member of an EPA-approved program to be using pesticides in an environmentally unsatisfactory manner the officer may issue a prevention notice under s. 24 of the Act. The notice may include a requirement for a user to undertake retraining. Section 23 of the Act defines an environmentally unsatisfactory manner to include use that has or is likely to lead to a contravention of any provision of the Act or Regulation or which is or has caused pesticide pollution.

2. Criteria for approval

Which programs are eligible for approval as EPA-approved programs

Programs are considered eligible for approval if they have appropriate content relating to pesticide use, systems to demonstrate participant compliance and accountable program governance arrangements.

Criteria used to assess programs

The criteria used to assess programs aims to ensure that by following the EPA-approved program's requirements relating to pesticide use, its members will maintain knowledge and skills needed to comply with the requirements of the Act and the Regulation.

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

- Avoiding off-target harm (including events such as spray drift)
- Only using registered pesticides
- Ensuring products are used in accordance with the approved label or permit (this includes the mixing of products)
- Storing pesticides in containers with the approved label
- Ensuring restricted pesticides are only used by authorised persons
- Causing records to be made, and kept, of pesticide use

The EPA will assess three main aspects of the program:

- Pesticide use content
- Demonstration of compliance
- Governance of the program

Pesticide use content

The EPA will assess a program to gain an understanding as to whether the scope of program content is proportionate to the expected types and levels of pesticide use within that particular industry. If the EPA approves a program the exemption from retraining only applies when the use of pesticides is in relation to activities covered by that particular program.

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

1. Pesticide use record keeping requirements – these can be communicated at the individual or organisational level, but regardless Pesticide users must comply with the record keeping requirements of the Regulation.
2. Product use requirements – responsible product use should occur in accordance with approved labels or APVMA permits, and use should only be by authorised persons (for example, for restricted products).
3. Risk assessment and minimisation requirements – including identification of exposure pathways, prevention of off-target harm, assessment of weather conditions and spray drift avoidance.
4. User capability requirements – maintaining knowledge and skills in responsible pesticide use developed through initial training. This can include capability to make correct product choices, to properly mix products and correct use of application equipment. Capability requirements can be specified at an individual or organisational level.
5. Storage and handling requirements – requirements regarding appropriate storage and handling of pesticides.

Examples of prospective EPA-approved program criteria include:

- *Keep complete records of each instance of pesticide use*
- *Store products in their original containers*
- *Workers handling pesticides must have evidence of competence*
- *Plant protection products must be registered for use 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 the requirements of the program. This should be systematic and verifiable.

The program must also have a process in place for corrective action should non-compliances be identified.

Examples of systems that might be in place include:

- Assessment by independent auditors, either scheduled and 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 others on revisions and considering urgent 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:

- Independent board
- Technical committees
- Other specialist committees

3. Procedure for being recognised

The EPA's process for recognising programs

Eligible programs are assessed against the criteria laid out in this Policy document. Where documentation available publicly online 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) of the Regulation and in accordance with this Policy will be published by notice in the Gazette. Programs may be approved subject to conditions, which will also be published in the Gazette. A condition of approval may include that it only applies to particular modules or components of a quality assurance scheme, not to the scheme as a whole.

Application to have a program assessed

Members or operators of relevant programs 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 launched.

Applications to have a program assessed should be emailed to chemicals.reform@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 scheme and the availability of information. The EPA will endeavour to complete assessments within a month of all necessary information having been provided.

Application for reassessment

If a program has already been assessed by the EPA and deemed not to meet the criteria and the operators or members of the program believe this assessment is not correct they are welcome to contact the EPA to discuss a reassessment. This also applies to programs that have changed their content since assessment by the EPA. Evidence to support this reassessment will need to be provided.

Consultation

If the EPA identifies a program it considers is 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 at this stage, to assist with the assessment.

After a program has been assessed and deemed to meet the criteria, but prior to a notice being published in the NSW Government Gazette, the EPA-approved program operators will be informed in writing of the outcome of the EPA's assessment. If the operators have any concerns with the notice of approval being published this can be discussed with the EPA.

A list of EPA-approved programs will be maintained on the EPA's website. Operators of EPA-approved programs, pesticide users and the wider community can contact the EPA with any questions about the process at chemicals.reform@epa.nsw.gov.au or via Environment Line on 131 555.

Review of approvals

The EPA may review an approval at any time. A review may result 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 the EPA will:

1. Issue the program operator with a notice of intention. The notice will:
 - a. Describe the discrepancy that has been identified
 - b. Ask the program operator for comment
 - c. Ask the program operator to outline the actions they will take to rectify the discrepancy and the timeframe within which these changes will be made.
 - d. Require the program operator to provide a response within four weeks.
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 or are not implemented in an agreed timeframe, the EPA will post notice of its intention to revoke approval on its website. The EPA may use other means as needed to ensure this intention is communicated to program members.

Revocation of approval will not be retrospective and the EPA will allow a reasonable timeframe for affected program participants to access training to satisfy clause 31(1) of the Regulation.

4. Review of this Policy

The EPA Board will review the operation of this Policy after its first two years in operation.

Updates to the document may also be made prior to or after that review timeframe 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>