



tasmanian conservation trust inc

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20 July 2011

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Submission on 'Draft Agricultural and Veterinary Chemicals (Control of Use) Regulations 2011'

Please find attached the Tasmanian Conservation Trust's submission on the 'Draft Agricultural and Veterinary Chemicals (Control of Use) Regulations 2011'.

Yours sincerely

Peter McGlone
Director

Tasmanian Conservation Trust Submission on the 'Draft Agricultural and Veterinary Chemicals (Control of Use) Regulations 2011'

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Unless otherwise stated, all comments in this submission relate to the discussion paper 'Agricultural and Veterinary Chemicals (Control of Use) Regulations 2011: Rationale for the Proposed Regulations and Regulatory Impact Statement' (referred to here as the Draft Regulations 2011).

PART 1: RATIONALE FOR THE PROPOSED AMENDMENTS

1. Amend the definition of 'ground spraying'

The Draft Regulations 2011 have strengthened the definition of 'ground spraying', from that used in the Draft Regulations 2008, to include some hand-held spray equipment used in commercial operations and the TCT supports this.

It is of concern to the TCT that the definition excludes commercial and home-based users spraying home garden products or domestic pest control products. The justification for this exclusion is that home garden products and domestic pest control products involve smaller quantities of chemicals and are used at lower concentrations. No information was provided in the Draft Regulations 2011 which might substantiate this claim and we are concerned that there are still loop holes in regard to regulation of some very dangerous chemicals used in domestic situations.

2. Amend the definition of 'water body'

The Draft Regulations 2011 have clarified that the definition of 'water body' refers to natural water bodies, whether they have been modified or not, and man-made water bodies and the TCT supports these changes. We are concerned that this definition does not include man-made drainage channels which may have intrinsic conservation value, e.g. habitat for threatened species, or may channel water into very significant water bodies e.g. Ramsar wetlands of international importance.

3. Amend the prohibition on aerial spraying within 100 metres of occupied buildings

The Draft Regulations 2011 does not change what aerial spraying contractors are currently required to do under civil aviation laws and we believe that an important opportunity has been missed to strengthen protection around homes and other occupied buildings.

It is of great concern that the 100 metres exclusion appears to be based solely on requirements of civil aviation laws, presumably to restrict noise impacts and to reduce risk of aircraft crashing into occupied buildings. From the information provided, it appears that this distance has not been determined on the basis that it will protect people from chemical contamination – which was the stated intent of revising these regulations.

The TCT recommends that the state government immediately institute a research project to verify whether the 100 metres exclusion distance is effective in achieving this objective.

The Draft Regulations 2011 have been strengthened compared with the Draft Regulations 2008 by prohibiting aerial spraying within 100 metres of an occupied building rather than residential premises and the TCT supports this.

The Draft Regulations 2011 provide no guidance on how pilots are to determine whether they are less than 100 metres from an occupied building. If it is left to pilot judgement then this is totally unacceptable.

To assist pilots in applying this and other regulations in the Draft Regulations 2011, the TCT recommends that instillation and use of GPS equipment be made compulsory in all aircraft used for this purpose. If it is deemed that a significant number of spray contractors would need time to install such technology, then a commencement date may need to be set which is later than the commencement date for the regulations generally.

GPS technologies are becoming the norm in aircraft and they provide an obvious benefit in terms of accuracy. But GPS also provides a digital record of flight routes, which would be very useful for reporting, and can be programmed to alert the pilot in regard to restricted areas. While some may see such a regulation as an impost on the industry, over time it would greatly assist the industry by identifying restricted areas more accurately and consistently, thus preventing complaints and legal actions.

4. Amend the instructions required to be given and received prior to aerial and ground spraying

The Draft Regulations 2011 are considered an improvement on the previous regulations and are supported, with the exception that we consider it important that an accurate estimation of the area to be sprayed should be required. The regulations should provide some guidelines on what would constitute an appropriate estimation of area. If the user cannot accurately estimate the area to be sprayed they are probably also failing to follow label requirements which specify application rates.

5. Amend the recording requirements for aerial and ground spraying

The TCT supports the requirement that a record of an aerial spraying event be made within 24 hours of it being completed for the reasons given i.e. it is required to ensure accuracy of the information provided.

We understand that a standard report form currently does not exist and we recommend that this be rectified including provision of a digital version.

We question why records must be kept for only two years when the impacts of some chemicals (which may lead to complaints and legal actions) may only become apparent more than two years after application.

6. Amend the neighbour notification requirements prior to carrying out aerial and ground spraying

It is good that the industry pressure to reduce the minimum period for neighbour notification for aerial spraying was resisted and the TCT commends the department for insisting on a two day minimum.

While we understand concerns raised by contractors that it can be difficult to predict conditions appropriate for aerial spraying, precautions can be taken by contractors to reduce risk of delays. For example contractors could issue land owners with more than one notification, providing different dates on which the spraying could take place, and withdrawing notifications if conditions are inappropriate.

The TCT is greatly concerned about the potential for the emergency provisions to be misused and the difficulty of policing any misuse because of the poor wording in the provisions. If the precautions suggested in the previous paragraph are applied, we see no reason for emergency provisions. If they are to be retained then terms such as "would be impractical", "significant economic loss" and "be likely to occur" in Section 36(4b) should be removed and replaced by clear and prescriptive terms. This provision must be worded in such a way that a breach can reasonably be determined and successfully prosecuted.

We also recommend that three hours will not be sufficient to allow land holders to be notified and that this should be increased to six hours.

The Draft Regulations 2011 have been strengthened to require that public authorities be subject to neighbour notification requirements and the TCT strongly supports this change. However, we ask that it be clarified that all government entities which are likely to be carrying out or authorising spraying be subject to this requirement. In particular we are concerned that Government Business Enterprises may not fit the definition of a public authority.

7. Amend the maximum residue levels of agricultural chemicals in water bodies

The Draft Regulations 2011 recognise that the triazine chemicals are 'persistent chemicals of concern in Tasmania' (page 13) on the basis that they are of major concern in drinking water catchments throughout the country. On this basis the TCT recommends the immediate banning of these chemicals.

The TCT is greatly concerned that the regulations specify maximum residue levels for only 61 chemicals which are viewed as widely used in agriculture in Tasmania and ignores all other chemicals which are used. We understand that a Department report from 2008 (currently not available from the DPIPW web site but the title can be provided) lists scores of more chemicals which are being used in Tasmania. If the regulations cannot immediately apply to all agricultural chemicals which are in use then there must be a process put in place to identify these and ensure that the regulations cover them.

The TCT is greatly concerned that specific maximum residue levels have not been established for 42 of the 61 commonly used agricultural chemicals. We accept that there are methodological problems with using limit of detection as the maximum residue level for these 42 chemicals. However, the default level of 1 part per billion which is proposed is really only an educated guess, inferred from what is known about other chemicals, and this is not acceptable.

Specific maximum residue levels must be established for each chemical through rigorous scientific studies and not inferred from what is known about other chemicals. We recommend that the regulations include a phase out of all chemicals which do not have a specific maximum residue limit and that this would be a compelling incentive for the industry and the state government to fund research.

Most of what is known about agricultural chemicals (even those which are better known) relates to likely impacts on human health and very little is known about the wider ecological impact of each chemical. This is an astonishing failure given that many of the rivers, streams and wetlands across Tasmania's agricultural landscape have been severely degraded and contain a myriad threatened species of flora and fauna. Approximately 70% of the fauna species and a significant proportion of the flora species listed on the schedules of the Tasmanian Threatened Species Protection Act are dependent on freshwater or riparian environments and potentially being impacted by many regulated chemicals.

8. Amend the exclusion zone around water bodies and protected places

The change from a 10 metres restriction down to only a two metres restriction is not explained or justified other than it was preferred by the industry and that it is better that chemicals are not sprayed right up to the edge of a water body (two metres is better than nothing). It is self evident that a two metres exclusion zone will make it virtually impossible to achieve the stated objective of preventing chemicals from entering water bodies. Because of spray drift and run-off (even if applied close to the ground and during very low wind levels), chemicals applied only two metres from a water body will inevitably enter the water.

The regulations should have considered the need to protect native riparian vegetation which is found along rivers, streams and wetlands from the presence of chemicals as well as protecting the water body.

PART 2: REGULATORY IMPACT STATEMENT

Due to time constraints no comments are provided in relation to the Regulatory Impact Statement.