



New South Wales

Pesticides Amendment (Records) Regulation 2001

under the

Pesticides Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pesticides Act 1999*.

BOB DEBUS, M.P.,

Minister for the Environment

Explanatory note

The objects of this Regulation are as follows:

- (a) to provide that records of aerial applications of pesticides, which are required to be made by holders of an aircraft (pesticide applicator) licence under the *Pesticides Act 1999*, must contain a description of the crop in respect of which the pesticide was applied or other situation in which it was used, along with particulars of the rate of application and the quantity applied (**Schedule 1 [1]**),
- (b) to require persons who use pesticides for commercial or occupational purposes, or in connection with agricultural, farming or forestry operations, to make and keep records in relation to the use of pesticides (**Schedule 1 [2]**),
- (c) to provide for offences in relation to the new record making and keeping requirements under the Regulation to be dealt with by way of penalty notice (**Schedule 1 [3]**).

With respect to the object referred to in paragraph (b), this Regulation inserts Part 4A in the *Pesticides Regulation 1995*. The new Part contains the following provisions:

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Explanatory note

Clause 11B provides that a person who uses a pesticide for commercial or occupational purposes (that is, when carrying on a business involving the use of pesticides, or while acting as (or on behalf of) a landlord, or while carrying out pest control operations for or on behalf of a public authority or on a golf course or bowling green) must make a record in relation to the use of the pesticide.

Clause 11C provides that a person who uses a pesticide in connection with any agricultural, farming or forestry operation will also be required to make a record as to the use of the pesticide, but only when using a pesticide in certain specified circumstances.

Clause 11D sets out the information that must be contained in a record required to be made under the previous clauses. A record must be made no later than 24 hours after the use of the pesticide.

Clause 11E sets out who keeps and who provides records.

Clause 11F makes it an offence for a person, in any record required under Part 4A, to make a statement, or to provide any information, that is false or misleading in a material particular.

Clause 11G provides that the EPA may, after appropriate consultation, exempt persons from any of the record making and keeping requirements under Part 4A.

Clause 11H provides for the integration of records under Part 4A with other records that are required to be made and kept under another law.

This Regulation is made under the *Pesticides Act 1999*, including sections 54 (2) (g), 117 and 119 (the general regulation-making power), in particular section 119 (2) (e) and (o).

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1 Name of Regulation

This Regulation is the *Pesticides Amendment (Records) Regulation 2001*.

2 Commencement

This Regulation commences on 31 July 2002.

3 Amendment of Pesticides Regulation 1995

The *Pesticides Regulation 1995* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 6A

Insert after clause 6:

6A Records of aerial application of pesticides

For the purposes of section 54 (2) (g) of the Act, the following additional particulars are required to be contained in a record made under that section:

- (a) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,
- (b) the rate of application of the pesticide and the quantity applied.

[2] Part 4A

Insert after Part 4:

Part 4A Records relating to use of pesticides

11A Application of Part

This Part does not apply to or in respect of aerial pesticide operations for which a licence is required under the Act.

11B Requirement to make records relating to use of pesticides for commercial and occupational purposes

- (1) A person must make (or cause to be made) a record, in accordance with clause 11D, that relates to each occasion on which the person uses a pesticide:
 - (a) in the course of carrying on a business involving the use of pesticides (regardless of whether that use is the primary purpose of the business concerned), or

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- (b) while acting in the capacity as, or while carrying out pest control operations for, the landlord of the premises on which the pesticide is used, or
 - (c) while carrying out pest control operations for or on behalf of a public authority, or
 - (d) while carrying out pest control operations on a golf course or bowling green.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) Subclause (1) does not apply in relation to the use of a pesticide that:
 - (a) is ordinarily used for domestic purposes (including home gardening), and
 - (b) is widely available to the general public at retail outlets (for example, at supermarkets), and
 - (c) is being applied by hand or hand-held applicator, and
 - (d) is being used in a quantity that:
 - (i) in the case of outdoor use—is appropriate for outdoor domestic purposes (so long as it does not exceed 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product), or
 - (ii) in the case of indoor use—is appropriate for indoor domestic purposes (so long as it does not exceed 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product).
- (3) Subclause (1) does not apply in relation to the use of a pesticide in public baths or in any swimming pool or spa.
- (4) Subclause (1) does not apply to persons to whom clause 11C applies.
- (5) If:
 - (a) a pesticide is used by a person individually (or as part of a team) while carrying out pest control operations for or on behalf of a public authority, and

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- (b) the pest control operations:
 - (i) involve the use of hand-held equipment only, and
 - (ii) are carried out under the supervision or direction of a person who has on-site responsibility for the operations (*the responsible person*),

the requirement to make a record in relation to the use of the pesticide applies to the responsible person and not to the individual person or to each member of the team.

- (6) In subclause (5):

team means a group of workers (including a group of workers who are members of a volunteer organisation) who are assigned to carry out a specific operation and who are working separately from any other group of workers.

11C Requirement to make records relating to use of pesticides in connection with agricultural, farming or forestry operations

- (1) This clause applies to persons who use pesticides in connection with any agricultural, farming or forestry operations.
- (2) A person to whom this clause applies must make (or cause to be made) a record, in accordance with clause 11D, that relates to each occasion on which the person uses a pesticide in any of the circumstances described in subclause (3).

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (3) The circumstances in which a record is required to be made are as follows:
 - (a) whenever livestock are treated for ectoparasites by means of a dip bath or by the use of powered spray equipment that is not hand held,
 - (b) whenever harvested horticultural crops are treated by means of a dip bath,
 - (c) whenever any spray equipment is used to apply a pesticide for horticultural purposes (including the spraying of fallow crop land),

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- (d) whenever any powered spray equipment is used to spray crops, fallow crop land or trees in a plantation (including in or around such trees),
 - (e) whenever ground driven powered spray equipment that is not hand held is used,
 - (f) whenever baits are applied to control vertebrate pests (other than baits that are used to control rodents in or around buildings).
- (4) A record is not required to be made in the circumstances referred to in subclause (3) (c) if:
- (a) the application consists of spot spraying that is confined to a small and restricted area on or within a tree crop, and
 - (b) the pesticide is applied by hand held and hand powered equipment only, and
 - (c) the pesticide is applied no closer than 20 metres to a property boundary.

- (5) In this clause:

ground driven powered spray equipment means powered spray equipment that is mounted on or attached to a vehicle.

horticultural crops means fruit, vegetables, flowers, nuts and herbs.

powered spray equipment means spray equipment that is powered otherwise than by human energy.

spray equipment means any device or apparatus that distributes pesticide through the air, and includes ground driven powered spray equipment and powered spray equipment.

11D Information to be contained in record

- (1) A record required to be made under clause 11B or 11C must contain the following information:
- (a) the full product name of the pesticide applied,
 - (b) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,

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- (c) the rate of application of the pesticide and the quantity applied,
- (d) a description of the equipment used to apply the pesticide,
- (e) the address of the property and the delineation of the area in which the pesticide was released and, in the case of a record under clause 11C, the order in which areas (such as paddocks or sheds) were treated,
- (f) the date and times of the application of the pesticide (including the start and finish time),
- (g) the name, address and contact details of the person who applied the pesticide or, in the case where the pesticide was applied by a person employed to apply the pesticide, the name of the employee and the name, address and contact details of the employer,
- (h) the name, address and contact details of the owner or occupier of the land in respect of which the pesticide was applied (if the information is not the same as the information required by paragraph (g)),
- (i) in the case where the record is required to be made by a responsible person (as referred to in clause 11B (5))—the name of each worker who used the pesticide under the on-site supervision or direction of the responsible person,
- (j) if the pesticide is applied outdoors by means of any spray equipment within the meaning of clause 11C:
 - (i) the estimated wind speed and direction at the start of the application and whenever there is any significant change during the application, and
 - (ii) if other weather conditions (such as temperature, humidity or rainfall conditions) are specified on the pesticide label as being relevant for the proper use of the pesticide—a description of those conditions at the start of the application and whenever there is any significant change during the application.

- (2) The record must:
- (a) be made as soon as practicable after the use of the pesticide concerned and, in any event, no later than 24 hours after the pesticide is used, and
 - (b) be in writing and in the English language, and
 - (c) be legible.

11E Keeping and provision of records

- (1) A person who is required to make a record under clause 11B (1) (a) or (b) must keep the record for a period of not less than 3 years after the date on which the record was made.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) A person who is required to make a record under clause 11B (1) (c) or (d) or 11C must:

- (a) if the person is the owner or occupier of the land on which the pesticide was applied—keep the record for a period of not less than 3 years after the date on which the record was made, or
- (b) if the person is an employee—provide the record to the person's employer, or
- (c) if the person is a contractor:
 - (i) keep the record for a period of not less than 3 years after the date on which the record was made, and
 - (ii) provide a copy of the record to the owner or occupier of the land on which the pesticide was applied.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (3) A person who is provided with a record or a copy of a record under this clause must keep it for a period of at least 3 years after the date on which the person is provided with the record or copy.

Maximum penalty: 300 penalty units in the case of a corporation, or 150 penalty units in the case of an individual.

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(4) In this clause:

contractor means a person who is engaged (other than under a contract of employment) for fee or reward to carry out operations involving the use of pesticides.

employee means a person employed under a contract of employment and who carries out operations involving the use of pesticides in the course of that employment.

11F False or misleading information in record

A person must not, in any record required to be made under clause 11B or 11C, make any statement, or include any information, that is false or misleading in a material particular.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

11G Exemption from record keeping requirements

- (1) The Environment Protection Authority may, by notice published in the Gazette, exempt a specified person or specified class of persons from any requirement under this Part.
- (2) Without limiting subclause (1), an exemption may relate to particular kinds of information referred to in clause 11D.
- (3) Before making an exemption under this clause, the Environment Protection Authority is required to consult with such persons or bodies as the Authority considers appropriate (including the representatives of any relevant environmental or industry group).

11H Integration with other record keeping requirements

The Environment Protection Authority may approve, either in a particular case or generally, of the integration of records that are required to be made and kept under this Part with other records that are required to be made and kept under any other law.

[3] Schedule 1 Penalty notice offences and short descriptions

Insert at the end of the Schedule:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Provision of this Regn	IPB Code (indivs)	IPB Code (corpns)	Short description code	Penalty (indivs)	Penalty (corpns)
Clause 11B (1)	5503	5509	not make record of pesticide use	\$400	\$800
Clause 11C (2)	5527	5537	not make record of pesticide use	\$400	\$800
Clause 11E (1)	6743	6745	not keep record	\$200	\$400
Clause 11E (2) (a)	6746	6747	owner or occupier not keep record	\$200	\$400
Clause 11E (2) (b)	7093	—	employee not provide record	\$200	—
Clause 11E (2) (c) (i)	7095	8090	contractor not keep record	\$200	\$400
Clause 11E (2) (c) (ii)	8094	8103	contractor not provide record	\$200	\$400
Clause 11E (3)	6731	6733	not keep record as provided	\$150	\$300
Clause 11F	6734	6736	make/ include false/ misleading statement/ information	\$200	\$400

BY AUTHORITY