Legislation and Licencing

Pesticide Safety Technical Note

Number 5

OFFICIAL

Contents

Licensing by the Department of Health 1
What is legislation? 1
Who is a pest control operator? 2
What is a pesticide? 2
Who is eligible to hold a pest control licence? 3
Qualifications 3
Fees 3
Records 4
Conditions of licence 4
Licensing by the Department of Energy,Environment and Climate Action (DEECA) 4
What is a prescribed class of chemical product? 5
Spray drift 5

Licensing by the Department of Health

This technical note is designed to inform you of the Victorian legislation relevant to the pest control industry.

To obtain copies of current public health legislation, visit Health legislation. All other Victorian legislation can be found on Victorian legislation

What is legislation?

Legislation is the act of making and enacting laws. Legislation includes Acts (made by the Parliament) which set up the legislative scheme and Regulations (made under the authority of an Act) which provide details of the legislative scheme.

Failing to comply with legislation may result in enforcement action by the body responsible for administering the legislation. Legislation is generally administered by government departments. Authorities established under legislation independent of government may also administer legislation. Where failure to comply is an offence under legislation, the person in breach is liable for prosecution.

Compliance with Australian Standards and Codes of Practice is not enforceable unless they are referred to in an Act or set out in Regulations. However, it is recommended that pest control operators (PCOs) adhere to these guidelines as they provide a minimum benchmark for the conduct of activities.

Who is a pest control operator?

The Department of Health (the department) licences and regulates pest control operators (PCOs) in Victoria under the *Public Health and Wellbeing Act* 2008 (the PHW Act) and the Public Health and Wellbeing Regulations 2019 (the PHW Regulations).

A pest control operator is defined in the PHW Act as a person who carries on or holds themselves out in any way as carrying on the business of controlling, destroying or repelling pests.

The PHW Act requires that anyone who uses pesticides in the course of a business of a pest control operator in Victoria, must hold a valid licence **unless** the pesticide is being used for the purpose of: horticulture[1]; agriculture[2]; water treatment; weed control and controlling a pest animal to protect an area or place which is not - a building used for commercial purposes; a domestic premises or privately owned land adjacent to a domestic premises.

A person who carries on a business or offers a service for fee or reward that involves the use of pesticides for any activity identified in the categories above may require a Commercial Operator Licence issued by the Department of Energy, Environment and Climate Action (DEECA).

What is a pesticide?

The PHW Act defines a 'pesticide' as:

a) any agricultural chemical product within the meaning of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992; and
b) any substance prescribed as a pesticide for the purposes of this definition.

There are currently no substances prescribed as a pesticide under the PHW Regulations.

The *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* defines 'agricultural chemical product' by reference to the definition in the Agvet Code of the Commonwealth which applies in Victoria.

The Agricultural and Veterinary Chemical legislation in Victoria defines 'agricultural chemical product' as a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:

a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
b) destroying a plant; or
c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
d) modifying an effect of another agricultural chemical product; or
e) attracting a pest for the purpose of destroying it

[1] Pesticides used for the purpose of horticulture are pesticides used in the treatment of the following commodities: fruit and vegetables, dried fruit and nuts, tobacco, seeds, flowers, ornamental plants, soil and potting mixtures

[2] Pesticides used for the purpose of agriculture are pesticides used in the treatment of the following commodities: grain, pulses, hay, logs, stock animals

Who is eligible to hold a pest control licence?

Persons who have attained (or, in the case of a trainee, are in the process of attaining) an appropriate qualification may be granted a pest control licence under the PHW Act.

Full technician licences expire 3 years after the date on which the licence is granted.

Trainee licences expire 12 months after the date on which the licence is granted.

A Trainee licence may only be issued to a person on a maximum of three occasions unless exceptional circumstances apply.



Qualifications

To be granted a full licence the applicant must have obtained the appropriate qualification as listed in Schedule 1 of the PHW Regulations – *Qualifications and training*. A licence may be granted with one or more of the following authorisations:

- Pesticides (excluding fumigants) formulated to control pests (including birds and rodents) other than pest animals and timber pests ['general authorisation (excluding timber pests)']
- Pesticides (excluding fumigants) formulated to control pests (including birds, rodents and timber pests) other than pest animals ['general authorisation (including timber pests)']
- Pesticides formulated to control pest animals and to protect– an area in a building used for commercial purposes; or domestic premises; or privately owned land adjacent to domestic premises ['pest animal authorisation']
- Pesticides in the form of fumigants ['fumigant authorisation']

To be granted a trainee licence, the applicant must be enrolled in or undertaking training in a prescribed course or units of competency as listed in Schedule 1 of the PHW Regulations – *Qualifications and training.*

The trainee may only use the authorised pesticides under the supervision of an appropriately qualified pest control operator with a valid technician licence.

The licence authorises the person to use only the pesticide that they are qualified to use.

A list of the prescribed qualifications is included in the department's *Guidelines for pest control operators in Victoria*.

Fees

An applicant will not be granted a licence unless they have paid the fee prescribed in the PHW Regulations.

The fees for a pest control licence increase each financial year in line with the Reserve Bank's Consumer Price Index. As a result, new fees come into effect annually on 1 July. Current fee information is available on our website at: Pest control licence applications - health.vic.

A person who usually resides in another State or Territory and who holds a valid licence in that State or Territory may apply for a Victorian interstate operator pest control licence or to work in Victoria under Automatic Mutual Recognition (AAMR), providing the pesticides they apply for authorisation to use are the same or similar in all respects to the pesticides that are authorised for use under their current licence. The Pesticide Safety team should be contacted for further information regarding eligibility.

Records

It is a requirement for PCOs to make and keep certain records under section 108 of the PHW Act and regulation 89 of the PHW regulations. It is an offence to fail to keep the prescribed records for the prescribed period or create false records. The following details must be recorded by the PCO carrying out the pest control activity for every pesticide application:

- Trade name of pesticide
- Batch number of pesticide
- Specific precautions to be observed including the re-entry period
- Date of application
- Start and finish times of application the pests treated
- Location of the pesticide application (including street address of property, if applicable)
- Specific location of the pesticide application within the property (i.e., areas within a property where the product was applied)
- Pests treated
- Method of application (spray or bait)
- Quantity of pesticide applied
- Rate of application or sufficient information to allow the rate of pesticide application to be determined (as expressed on the product label)
- If applied outdoors, the ambient temperature, wind direction and speed at the time of application (and any other relevant weather conditions)
- Name and licence number of the person applying the pesticide
- Name and licence number of the person supervising the application (if applicable – e.g. where the pesticide is applied by a trainee licence holder)
- Trading name, address and phone number of the business employing, engaging or owned by the person applying the pesticide
- Name, phone number and address of the person for whom the application was carried out
- Signature of the person completing the record

Records should be accurate, up to date, coherent, consistent and in English. They must be kept at the business address for a minimum of three years.

Further information on records can be found in *Technical note number 3 – Record keeping*.

Conditions of licence

All pest control licences are subject to certain conditions. It is an offence to breach a condition of licence.

Further information on conditions can be found in *Technical note number 17 – Conditions on Licence*

Licensing by the Department of Energy, Environment and Climate Action (DEECA)

The Agricultural and Veterinary Chemical (Control of Use) *Act 1992* requires any person who carries on a business or offers a service involving the use of a prescribed class of agricultural chemical to have a Commercial Operator Licence (COL), unless the business ensures that all use of the chemical product (pesticide) is undertaken by a person who holds a pest control licence under the PHW Act.

What is a prescribed class of chemical product?

The Agricultural and Veterinary Chemical (Control of Use) Regulations 2017 lists the following as prescribed classes of agricultural chemical products:

- herbicides; fungicides; insecticides; growth regulators; vermin destroyers; avicides

Spray drift

Under the PHW Act it is an offence to cause a nuisance. Nuisances are defined as a state, condition or activity which is, or is liable to be, dangerous to health or noxious, annoying, or injurious to personal comfort. The Act requires municipal councils to remedy as far as is reasonably possible all nuisances in its municipality. Councils are required to investigate any notice of a nuisance and either take action to abate nuisances or advise the notifier of any available methods for settling the matter privately.

Under the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 a person must not carry out agricultural spraying which injuriously affects -

(a) any plants or stock outside the target area; or

(b) any land outside the target area so that growing plants or keeping stock on that land can be reasonably expected to result in the contamination of the stock or agricultural produce derived from the plants or stock; or

(c) which contaminates any stock or agricultural produce outside the target area.

Off target application of chemical products which creates a hazard that is likely to adversely affect a person's health or the environment comes within the offence of pollution created by the *Environment Protection Act* 1970.

WorkSafe Victoria may also become involved if the spray drift incident involves the activities of a workplace that effects the health and safety of employees at that workplace and of others (being persons other than the employer's employees).

DEECA investigates reports of alleged misuse of chemical products and co-operates with the department and Environment Protection Authority when pursuing alleged incidents involving off-target applications of agricultural chemical products.

Further information on spray drift can be found on Better Health and Agriculture Victoria.

To receive this document in another format, email Pesticide Safety <pesticidesafety@health.vic.gov.au>.

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Available at Pest Control Technical Notes < https://www.health.vic.gov.au/environmental-health/pest-control-technical-notes>