



SUBMISSION IN RESPONSE TO

**DRAFT AGRICULTURAL AND VETERINARY CHEMICALS
(CONTROL OF USE) REGULATIONS - TASMANIA**

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INTRODUCTION

CropLife Australia (CropLife) is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of crop protection and agro-biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than \$1.5 billion a year to the Australian economy and directly employs thousands of people across the country.

CropLife and its members are committed to the stewardship of their products throughout their lifecycle and to ensuring that worker safety, human health, environment and trade risks associated with agricultural chemical use in Australia are responsibly and sustainably managed. Our member companies spend more than \$13 million a year on stewardship activities to ensure the safe use of their products on the environment and human health. CropLife ensures the responsible use of these products through its industry code of conduct and has set a benchmark for industry stewardship through programs such as **drumMUSTER**, ChemClear® and Agsafe Accreditation and Training. Our stewardship activities demonstrate our commitment to managing the environmental impacts associated with container waste and unwanted chemicals.

CropLife also supports the appropriate regulation of agricultural chemical products to ensure they can be safely used by farmers and other land managers as a valuable tool to control pests, weeds and diseases. These products are critical tools in maintaining farmers' capacity to provide nutritious, healthy, abundant, affordable and safe food for Australian and export markets. CropLife is, however, concerned that the draft regulations as currently written will significantly hinder the capacity of chemical users and other land managers to control pests, weeds and diseases.

CropLife is concerned that the proposals:

- Inappropriately apply existing water quality standards;
- Are inconsistent with the Council of Australian Governments and Primary Industries Ministerial Council efforts to harmonise regulations relating to the control of use for agricultural chemicals;
- Selectively and incorrectly apply studies to support artificially low water quality standards; and
- Are overly restrictive with the potential to result in perverse outcomes for the Tasmanian community and the natural environment.

CropLife looks forward to working with the Tasmanian Government on these proposed reforms to ensure that the benefits to farmers from agricultural chemical use can be maintained while ensuring better protection of the environment. To that end, our submission suggests particular changes that may maintain the key improvements sought while maintaining farmers' access to necessary tools.

ISSUES

For any regulation to deliver the required policy objectives, it must be both effective and efficient. Effective regulation has a clear understanding of the policy objective sought to be achieved through implementation of additional regulation. Where possible, it should avoid duplicating the provisions of other regulatory schemes so that the risk of duplication and conflict is minimised.

Efficient regulation seeks to ensure that the regulatory option ultimately adopted achieves the desired policy outcome at the lowest cost to the regulated industry or community. Collectively, effective and efficient regulation maximises the benefits and minimises the costs associated with a regulatory scheme.

The draft regulations to control agricultural chemical use in Tasmania are not as effective and efficient as they potentially could be. CropLife's concerns are outlined below.

1. Inappropriate application of existing water quality standards

CropLife notes that the existing draft regulations apply the water quality standards for pesticides from the Australian Drinking Water Guidelines (ADWG). Under the proposed new Regulation 39, residues of chemicals in water bodies must not exceed the values specified in Schedule 4 to the draft regulations. Where no value is specified in Schedule 4, concentrations should not exceed 1 µg/l.

Using the ADWG for regulatory compliance and subsequent legal action is contrary to the intent of the ADWG and could be ineffective. The pesticide levels for water quality in Table 10.11 of those guidelines are set at the level of detection. In contrast to the suggestions in the Regulation Impact Statement (RIS), pesticide levels in Table 10.11 are **not** derived from the use of the pesticide in accordance with the approved label directions unless the product is registered for use in water. Furthermore, the ADWG states:

*"The amount by which and the duration for which any health-related guideline value can be exceeded without raising concerns for public health depends on the particular circumstances. Exceeding a guideline value should be a signal to investigate the cause and, if appropriate, to take remedial action."*¹

Tasmania's rivers and streams represent dynamic systems moving water over large distances. CropLife foresees that attempting to link individual detections of pesticide levels exceeding those specified in Schedule 4 will provide significant administrative and regulatory difficulties. **CropLife would welcome** further discussions with the Tasmanian Government on how it intends to manage these challenges.

CropLife also notes that the ADWG itself is subject to shortcomings that limit its utility as a reference document for legislatively rigid water quality standards. The ADWG are not exhaustive and are infrequently updated to include new chemicals. Including a 1µg/L default for unlisted chemicals will prevent newer chemicals with potentially less environmental concerns from being used in Tasmania. Furthermore, with the exception of chemicals registered for use in water, the ADWG are developed using only publically available data and do not draw on the often considerable unpublished proprietary data that is made available to the Australian Pesticides and Veterinary Medicines Authority (APVMA) when it conducts its risk assessments.

A clear statement of the environmental or health values that are sought to be protected must be made apparent to ensure that the most appropriate risk management practices are adopted. CropLife suggests that if it is the intention of the Tasmanian Government to protect its citizens and the environment from potential drinking water contamination by pesticides, then it should work with other Australian governments within the Primary Industries Ministerial Council review of the regulation of pesticides to implement a national scheme that sets appropriate, frequently updated guidelines in consideration of all the available pesticide data.

¹ National Health and Medical Research Council 2004, p6-5

The guideline values employed, whether set at the level of detection for those products not permitted to be used in water catchments, or set at levels that would be consistent with permitted and legal use for those products that may be used in water catchments, are more properly viewed as values that facilitate monitoring and compliance with agricultural chemical label directions. They should not be used as the basis for offences in their own right.

CropLife supports strong, but practical, regulation of agricultural chemicals. For chemical use, that means that regulations by states like Tasmania should be focussed on ensuring agricultural chemical products are used in accordance with label directions. Where farmers follow the instructions included on product labels, workplace safety, human health and environmental risks are acceptable. This is the basis of the National Registration Scheme. CropLife is concerned that the approach employed by these draft regulations may be perceived as derogation from that principle by the Tasmanian Government, and is contrary to the objectives of the current COAG review of pesticide regulation.

Farmers need clear, consistent advice on how to safely and effectively use agricultural chemicals. Imposing requirements on farmers to only use chemicals in ways that do not result in an exceedence of water quality guidelines, without providing them with the information about how they need to apply chemicals to meet that target makes compliance by farmers difficult.

CropLife recommends that the Tasmanian Government consider using appropriately set water quality guideline values in accordance with their original intended use as a monitoring and risk management tool for regulators, rather than as the basis for specific offences. Offences relating to the use of agricultural chemicals should remain as failing to comply with the label directions of the product used.

This approach would need to be supported by clear, consistent and auditable record keeping obligations by users to demonstrate that they have complied with all label directions.

2. Inconsistency with COAG and PIMC efforts to harmonise national regulations relating to the control of use for agricultural chemicals

The Council of Australian Governments (COAG) has directed the Primary Industries Ministerial Council (PIMC) to prepare a model for nationally consistent regulation of agricultural and veterinary chemicals. CropLife is disappointed that Tasmania seeks to implement its own approach to the use of agricultural chemicals even before models for a harmonised system can be developed. Such an approach must result in questions being asked about Tasmania's commitment to reform.

CropLife believes that Tasmania's farmers should have access to the same protections, assurances and tools as would be available to all agricultural chemical product users in other Australian jurisdictions. Increased regulatory efficiency may also result from consistent training and licensing provisions that are supported by nationally consistent application rules.

Different rules and regulations regarding the way that agricultural chemicals may be used within each jurisdiction result in significant inefficiencies for Australia's farmers. This was recognised by the Productivity Commission in its *Report on Chemicals and Plastics Regulation* released in 2008. It is unacceptable for regulators to be seeking to harmonise Australia's approach to controlling agricultural chemical use at the same time as introducing jurisdictionally unique regulations.

CropLife is concerned that the proposed new regulations seek to inappropriately add additional local risk assessments in contradiction of Tasmania's commitment to a nationally harmonised system for regulating agricultural chemicals. The proposed principles for a new national framework for agricultural chemicals regulation expressed that:

Assessment and registration of agvet chemicals will continue to be carried out by a national agency and be based on a scientifically sound and rigorous assessment of the risks. Efficiency in assessment will be assured by:

- *transparency and predictability of process;*
- *alignment of assessment effort and data requirements with the level of risk; and*
- *appropriate use of overseas data, methodologies and assessments.²*

² http://www.coag.gov.au/reports/docs/agricult_veterinary_chemical_framework.rtf

In seeking to conduct an additional risk assessment, the Tasmanian Government is directly contradicting its earlier commitment to risk assessment by a national agency.

CropLife understands the desire of Tasmania's regulators to create rules and regulations that take into account the unique aspects of Tasmania's environment, demography and agricultural production systems. CropLife also understands that Tasmania has a specific interest in maintaining a clean and green image as an important marketing tool for Tasmanian produce. Many responsible farmers and other states and territories have similar objectives. The APVMA currently has the capacity to selectively register products in different jurisdictions where the risks from use are not comparable. Risks need to be objectively and scientifically assessed to ensure that regulatory burdens are not imposed on farmers that are not justified by the genuine risk presented by a product. CropLife therefore believes that the current capacity to vary both product registrations and label use instructions can accommodate any concerns regarding the unique aspects of Tasmania's environment.

Objectives of environmental protection need to be balanced with the right for all Tasmanian farmers to choose the production systems that best suit their own circumstances, without impacting upon the environment or the health of consumers or workers. The current National Registration Scheme is able to achieve an appropriate balance.

3. Selective and incorrect application of studies to support artificially low water quality standards

CropLife notes that the RIS accompanying the proposed regulation states that:

"The European Union threshold for groundwater contamination is set at 0.1µg/l"

The RIS implies that this is the regulatory limit for compliance in Europe. This is incorrect. European regulators require applicants to demonstrate that the proposed good agricultural practice for a product will not exceed 0.1µg/l in **ground** water. Applying this limit to surface water is inappropriate and not related to any risk based scientific assessment of a chemical product.

CropLife also questions the scientific basis on which additional regulation of triazines in Regulation 39 is founded. While the RIS claims that:

"There is evidence that some persistent pesticides (notably triazines) may have ecologically significant effects at levels approaching 0.1µg/l over periods as short as a few weeks".

Triazines are some of the most extensively and rigorously assessed chemicals in the world. In the case of atrazine, credible science based regulators, including the US Environment Protection Agency and the APVMA, have considered over 6,000 studies in their respective reviews of atrazine. On the basis of this comprehensive body of evidence these regulators have endorsed the safety of products containing atrazine when used responsibly and in accordance with label directions.

For atrazine, the APVMA has also noted that:

"a great deal of research has been undertaken investigating potential human health and ecological impacts of atrazine. The generally consistent findings flowing from this body of research have provided regulatory authorities around the world with some significant confidence that the chemical can be used safely, subject to a range of conditions.

"Good quality, new scientific studies are evaluated against this data bank of existing research by scientific and regulatory agencies as they become available. Recent research suggesting adverse impacts on human health and on amphibians for example, has gone through this process. To date, no international regulator has made adverse human health or environmental findings against atrazine that are not consistent with Australia's current standards and controls."³

³ http://www.apvma.gov.au/news_media/chemicals/atrazine.php

Without specific details of the Tasmanian Government's claimed evidence and details of how the department has considered such evidence to assess its scientific validity and practical relevance in a risk assessment context, CropLife does not believe that there is a credible scientific basis for the additional restriction imposed on triazines in Regulation 39.

If the Tasmanian Government is in receipt of credible scientific evidence relating to health or environmental risks associated with Tasmanian triazine use, it is incumbent upon them to provide that to the APVMA so that it can be assessed and any necessary changes to label directions made.

4. Overly restrictive with the potential to result in perverse outcomes for the Tasmanian community and the natural environment

Agricultural chemicals are used because they provide benefits to farmers and other users. These benefits can include increased production yields, higher quality produce and lower costs to manage pests, weeds and diseases. Collectively, these benefits have the capacity to significantly improve the production efficiency of agricultural production systems in Tasmania.

Other users of agricultural chemicals do so for the cost effective management of pests, weeds and diseases in road sides, civic parks and playgrounds, along road and rail transport corridors and in maintaining nature reserves. Without effective control, unrestricted weed growth can significantly damage infrastructure and result in additional maintenance and repair costs for infrastructure operators.

Invasive environmental weeds can also have devastating effects on natural biodiversity, out-competing native species, destroying habitat and preventing effective native habitat recovery. Agricultural chemicals, used responsibly, remain effective tools for pest and weed control.

CropLife notes that some requirements for record keeping and neighbour notification may be duplicative and inefficient. Some targeted amendments to address these areas of inefficiency would assist in maximising the benefits of the regulation.

COMMENTS ON SPECIFIC AMENDMENTS

Amendment 5: Amend the recording requirements for aerial and ground spraying

CropLife supports appropriate record keeping by users as part of a system to responsibly use agricultural chemicals. Record keeping helps to ensure users are aware of their obligations to use an agricultural chemical in accordance with the instructions on the label, as well being part of integrated pest management systems.

To minimise the regulatory burden associated with agricultural chemicals, it is important that a level of flexibility is available to take into account the range of reporting tools currently available to farmers.

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

CropLife does not support *mandatory* notification measures prior to the use of agricultural chemicals. Mandatory notification does not improve best practice application and in some circumstances can work against best practice application of agricultural chemicals. While CropLife supports neighbour notification as good practice to enable users and neighbours to cooperate to deliver safe and effective application of agricultural chemicals, this should generally occur through the cooperation and consideration between neighbours.

Users of agricultural chemicals are already obliged to prevent agricultural chemicals from inadvertently being transported onto neighbouring properties and causing damage. This provision should remain sufficient to manage potential risks between neighbours associated with chemical use.

Notification actions between neighbours must be flexible. Best practice principles would require agricultural chemical application when meteorological conditions provide the best outcomes for use. This can be unpredictable, meaning that fixed notification procedures may force users to apply chemicals after optimal conditions have passed. The effort of delaying application and completing additional notification procedures to reflect changeable meteorological conditions is often too difficult and expensive.

It is more appropriate that neighbour notification provisions remain controlled by codes of practice, rather than through regulation. This will provide a level of flexibility that can facilitate best practice application without being restricted by inappropriate and ineffective regulation that is slow to change to accommodate innovations in application technology.

Furthermore, CropLife believes that much of the information that must be contained in a notification is irrelevant and therefore unnecessary. In particular, the following requirements for users of agricultural chemicals to provide information are unnecessary, and prevent farmers from making necessary changes to reflect the situation on the day of application:

- The full trade name of each agricultural chemical product to be used in the ground spraying;
- The amount of each agricultural chemical product to be used in the ground spraying; and
- The type of crop to be targeted by the ground spraying.

Preventing farmers from making day of application changes can have perverse environmental impacts due to the wrong product or application technique being used. **CropLife would welcome** further discussion around the policy objectives sought to be achieved through implementation of these draft regulations. Without a clear policy justification for these elements CropLife recommends deletion of Paragraphs (c), (d) and (f) of Subregulation 37 (6).

Amendment 7: Amend the maximum residue levels of agricultural chemical products in water bodies.

CropLife is concerned that the Tasmanian Government is inappropriately applying guideline values for water quality as the basis of an offence. CropLife believes that a superior approach would be for Tasmania to make the basis of an offence failure to comply with the label statements expressed on each agricultural chemical product.

It will be very difficult for regulatory authorities to link an excessive detection to an action or omission made by a chemical user. While the detection may indicate that an offence in the use of chemicals has occurred, it should not of itself be the basis for an offence. The distance that water can travel within the environment from its source to the point of sampling will mean that attempts by regulators to link a particular pesticide application event with a water sample that exceeds a water quality guideline will present significant administrative and enforcement difficulties. Water quality guidelines must only be used to identify the need for further investigations regarding the cause of any exceedence and to implement appropriate risk management strategies.

CropLife is also concerned at the magnitude of the penalty associated with this offence. The construction of the offence seems to indicate that strict liability is intended. This being the case, the intended penalty of 200 penalty units is excessive. A penalty of this magnitude would ordinarily require that fault elements be present in the construction of the offence.

CropLife notes that the separate offence relating to creating excessive concentrations of agricultural chemicals occurring on two occasions at least 14 days apart is inappropriate. While CropLife understands that the intent of the regulation is to prevent a low level chronic exposure to agricultural chemicals, the current construction of this offence means that once a user has used an agricultural chemical that resulted in a concentration that exceeds 0.1 µg/l for the chemicals specified, any subsequent use of a chemical that results in a similar concentration after 14 days will result in the commission of an offence. Even if the second concentration exceedence occurs several years after the first, an offence still occurs.

The substantive effect of this provision is to effectively and inappropriately lower the level at which a chemical concentration creates an offence. The guideline values developed and deployed in the ADWG have been developed only to act as a trigger for further investigation and cannot be used as evidence that a product has not been used in accordance with the label instructions. Label instructions themselves have been approved by the APVMA following assessment of available data to ensure that the use of the chemical presents no unacceptable risk to users, consumers and the environment.

Consequentially, it is certainly possible for an agricultural chemical user to responsibly follow the directions for use on a legal, permitted product and to comply with all set back and no-spray requirements to minimise the potential for any product to enter a water body, but still create an offence because the levels considered to be acceptable under the proposed Tasmanian regulations are not linked to the risk assessment conducted by the APVMA for the label approval (except for those chemical products registered for use in water).

Farmers and other users will be presented with the prospect of not having adequate instructions to protect themselves from prosecution following agricultural chemical application. Clearly, farmers should take all necessary precautions to minimise the risk associated with the use of chemical products, however, this regulation creates an offence with which farmers will find it difficult to comply.

It is inappropriate for Tasmania to impose regulations that will capture responsible farmers that are employing their best endeavours to use chemical tools safely, sustainably and responsibly. The magnitude of the penalty associated with an offence is particularly excessive when considering that a farmer could be subject to it despite complying with all label directions.

CropLife understands that the Tasmanian Government is seeking to protect the health of the environment from chronic, low-level exposure to agricultural chemicals. For human health, the ADWG health guideline values reflect chronic exposure safety levels. Chronic environmental risks are assessed by the APVMA prior to a product being registered for use. If the Tasmanian Government is aware that there are other risks from chronic environmental exposures that are not being taken into account by the APVMA, then these should immediately be raised with the Authority for its consideration. Appropriate changes to label instructions or product withdrawal can then be imposed if the additional risks are identified.

Requiring farmers to take responsibility for these vague, additional risks where they have neither the skills, knowledge nor instructions necessary to do so will not result in water quality improvements.

CropLife recommends that Tasmania delete the offences in Subregulation 39 (2) and (3) and instead reinforce requirements for users to comply with existing label instructions.

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

CropLife understands the objective of these draft regulations is to prevent agricultural chemicals being present on land where they may cause a health risk for persons present on that land, or that may enter adjacent water bodies.

CropLife supports appropriate set backs from sensitive areas for agricultural chemicals used in agriculture. However, CropLife believes that these are best managed by science and risk based buffer zones. CropLife notes that many agricultural chemicals that present risks to aquatic ecosystems already have label instructions prohibiting their use near water sources.

Existing provisions to protect sensitive locations through existing label instructions should be preserved and not confounded by duplicative and inconsistent state based requirements.

CropLife is concerned that placing obligations on users to ensure that there is no residue present on premises within two metres of a water body is excessive and inappropriate. To ensure that there is no residue from agricultural chemicals within two metres of a water body would require downwind buffer zones potentially in excess of several hundred metres. This regulation is likely to result in significant and additional costs on agricultural production in Tasmania.

Again, CropLife is concerned that the magnitude of the penalty resulting from a breach of this provision is excessive. By failing to provide clear guidance on how agricultural chemical users can use safe, sustainable and legal products and avoid significant fines, it is likely that a significant proportion of Tasmania's agricultural production will become unviable.

CONCLUSIONS

Agricultural chemicals are subject to significant, detailed and strict control both before and after registration. Pre-market risk assessment ensures that agricultural chemicals can be used safely with no unacceptable risk to worker safety, consumer protection or the environment. This risk assessment results in a set of label instructions that must be followed to ensure that all the risks from agricultural chemicals are properly managed. The risk assessment conducted by the APVMA is rigorous, science based and reliable.

Users of agricultural chemicals are subsequently relieved of responsibility to determine the best and safest way to apply a chemical product. Rather, they simply need to ensure that they remain in compliance with the instructions specified on the product label.

Imposing additional requirements on users of agricultural chemicals without providing them with the knowledge, skills or guidance to be able to comply remains unacceptable. CropLife is concerned that without some targeted revisions to these proposed regulations, the use of agricultural chemicals in many parts of Tasmania will present a significant risk of technical regulatory breaches by users without any improvement in environmental or human health and safety.

CropLife notes that the significant penalties proposed for breaches of the regulations are excessive. Unless fault elements of the proposed offences are introduced, sound public policy would indicate that the magnitude of these penalties should be reduced.