



Submission

On

Draft Regulations

relating to

Aerial and Ground Spraying

In Tasmania

Tasmanian Farmers and Graziers Association

July 2008

SUBMISSION IN BRIEF

Tasmanian farmers compete in tough commercial markets. Most product is sold interstate and overseas, and by far the majority is sold on a commodity basis into markets where Tasmanian producers are “price takers” rather than “price makers”. Marketing programs based on developing a “clean and green” market image and niche markets will not change these facts.

Commercial success in these circumstances is dependent on price competitiveness, and this in turn depends on the ability of individual farm enterprises to increase productivity and reduce costs, to bring the unit cost of production down. Use of chemical sprays to control weeds, pests and diseases is fundamentally important in this regard.

On the other hand, there is no doubt that careless use of chemical sprays can pose risks to human health, life style and businesses, and to the environment, and community concerns in this regard need to be acknowledged.

In the circumstances good regulations to govern the use of chemical sprays are necessary, and moves by the Government to introduce regulations are timely.

However, the Draft Regulations released by the Government have to be regarded as no more than a very rough first draft in this regard. They are seriously flawed in a number of respects, and if they are not drastically revised they will bring the fact of regulation in this important area into serious disrepute.

Weaknesses relate to lack of a clear and realistic objective, very deficient definition of the term “prescribed water body”, discrimination between chemical users, totally impractical provisions relating to neighbour notification, and an obvious difficulty in enforcement in the area of residues on “prescribed premises”.

The flaws in the Draft Regulations reflect, among other things, undue haste in their preparation and an almost total lack of proper consultation with chemical user representatives.

The TFGA strongly recommends the following to the Government.

- 1. A clear cut statement of Objective is required for the Draft Regulations, which sets out, among other things, that Government supports the responsible use of chemicals in agriculture.***
- 2. There must be much clearer definition of the term “prescribed water body” in the Draft Regulations, to remove all ambiguity with regard to what water bodies are “prescribed” for the purposes of spray control.***
- 3. The Draft Regulations should make no distinction between farmers and other primary industry land owners on the one hand, and rail and road managers and***

users of hand held equipment on the other, in the application of restrictions on chemical spraying.

- 4. The Draft Regulations should limit notification requirement to once per year (calendar or financial) with notification instrument to be hard copy notice delivered to houses on each of the premises within 100m of land which may be sprayed during the ensuing 12 months.*
- 5. The Draft Regulations should rule that a Statutory Declaration that hard copy notification has been left at the homes of neighbours, will be accepted as evidence that notification has been delivered to notifiable premises.*
- 6. The Draft Regulations should cover all chemical spraying, including that from hand held equipment to close what is currently a gaping loophole.*

The TFGA also recommends strongly to the Government that it re-draft the Draft Regulations completely, and convene a Working Group of chemical user representatives to provide it with advice in doing so.

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INTRODUCTION

Tasmanian farmers compete in very tough commercial markets. The vast bulk of our agricultural product is sold interstate and overseas, and by far the majority as commodity product. This means that farmers have to use every possible opportunity to improve productivity and reduce costs if they are to remain in business.

Use of chemicals to control weeds, pests and diseases is fundamentally important in this regard. Organic and Bio-dynamic farms have their place in Tasmanian agriculture but these remain very small niche producers in relative terms. If farmers are restricted in their use of chemicals they will necessarily become less competitive, either because they must then accept reduced productivity or because they must move to a more expensive control methods.

On the other hand there is no doubt that careless use of chemicals can lead to unintended risks with regard to human health, life style and business interests, and the environment generally. The TFGA is well aware of concerns in the community with regard to these risks.

The TFGA believes that formal regulation of the use of chemicals for weed, pest and disease control is necessary and timely, both to address community concerns and to provide certainty for farmers in the circumstances. However, that regulation must recognise the legitimate operational needs of users as well as those of others.

This submission is based on the view that well drafted regulations are desirable from the point of view of land owners who need to use chemicals, and that it is possible to draft regulations which will mitigate unintended impacts of chemical use while allowing their cost effective use to control weeds, pests and diseases.

BACKGROUND

A commodity based industry

Essentially all Tasmanian agricultural production is sold into interstate and overseas markets, even though a degree of processing may occur in the state. Moreover, the vast majority of product is sold on a commodity basis with individual enterprises competing on price. Combine this with the fact that Tasmanian farm enterprises are not major players in their markets and it becomes clear that Tasmanian farmers are “price takers” rather than “price makers”. The current strength of the Australian dollar relative to competitor currencies does not help farm profitability in the circumstances.

There is a fascination in the Tasmanian Government and parts of the Tasmanian community with the idea that Tasmanian agriculture can somehow lift itself out of commodity production, by trading on the fact of the State’s remoteness and relative lack of industrial development, to establish a “clean and green” market image. This may well be possible for a limited range of products but it is certainly not the case for the bulk of what we produce. Nor is there any evidence that even where producers can establish niche markets on the basis of this image, this translates into any kind of “price maker” status.

The vast majority of Tasmanian agricultural production is sold into interstate and overseas commodity markets where we are “price takers”.

Productivity and cost imperatives

Farmers selling into commodity markets where they are “price takers” are obliged to compete on price to stay in business. That means that if farm enterprises are to remain profitable, management focus must be on driving down the unit cost of production. In practical terms that means maximising productivity and minimising costs.

A fundamentally important step in maximising farm productivity is effective weed, disease and pest control, and if this is to be done in a cost efficient way it necessarily requires the use of chemicals, applied with the best technology and techniques available.

To the extent that land owners are prevented from doing this productivity and cost gains will be compromised.

Tasmanian farmers must be allowed to take maximum advantage of chemicals to maximise productivity and minimise costs.

Mechanisation is essential

Of particular importance for weed, pest and disease control is the fact of an aging and shrinking farm work force.

The Tasmanian Government's 2008-09 budget papers, released in June 2008, note (Budget Paper No 1, *The Budget*, Table 2.2) that some 52% of farm workers in Tasmania are older than 50 years. The figures for all other occupational areas cited are lower, with the highest among these being some 38 years (cleaners/laundry workers). Combine this with the ongoing and undoubted decline in the numbers of people employed per farm enterprise and it is clear that Tasmanian agriculture faces an increasingly serious management and manpower problem.

In the circumstances Government must help farmers maximise use of mechanical methods, including in relation to chemical use, regardless of whether they undertake the work themselves or through contractors. Manual application of chemicals on farm is simply not a practical option in other than very limited circumstances.

Tasmanian farmers must be allowed to take maximum advantage of opportunities to mechanise application of chemicals

Human health and off-site risks

There is no question that careless use of chemicals can impact on the health of humans and animals, and on the lifestyles and business interests of people. It can also have impacts on environmental values. These are clearly not intended impacts, but real nonetheless.

There is also no question that there are significant concerns in parts of the community that the risk of such impacts needs to be managed through regulation of spraying by Government.

Indeed, the TFGA would welcome the introduction of well drafted regulation because of the certainty it will provide for responsible farm enterprises which need to be able to use chemicals.

There are undoubted risks to human health, life style and business interests, and environmental values, from careless use of chemicals, and well drafted regulation of chemical use will mitigate these and provide certainty for chemical users.

Prerequisites for good regulation

Good regulations relating to chemical spraying needs to be based on a very clear idea of why they are being prepared, what needs to be done to achieve that objective and how this can be done with minimum impact on the legitimate needs of land owners who need to use chemicals.

Some important points here are as follows.

- If chemicals are a threat to human health, life style or business interests, or the environment, that must be the case regardless of who uses them and

how they are applied. Subsets of users should not be excluded from regulation where they use the same chemicals.

- There needs to be genuine recognition of the need for simplicity and cost efficiency in what is required of land owners who want to use chemicals, in satisfying regulatory requirements. To apply logistically complex neighbour notification requirements, for example, will simply result either in disregard of the regulations – and consequent expensive court processes - or unnecessary and expensive abandonment of chemical use by farmers.
- Regulations need to be drafted to avoid creating obvious loopholes for land owners (or neighbours) to exploit. If regulations can be avoided by chemical users or abused by neighbours, they are not good regulations. It is not in the interests of Government, the community or farmers to have poor regulations.

SPECIFIC COMMENT

The Draft Regulations suffer from six major weaknesses.

Lack of a clear objective

There is no statement incorporated in the Draft Regulations which makes it clear that there is any kind of ongoing support by Government for responsible use of chemicals for weed, pest and disease control by land owners, in particular for land owners engaged in commercial primary industry land use.

Without a statement of this kind there can be no context within which court rulings can be provided on breaches or otherwise of the regulations, where the wording in the regulations does not provide absolute and unambiguous clarity on their intent.

A clear cut statement of Objective is required for the Draft Regulations, which sets out, among other things, that Government supports the responsible use of chemicals in agriculture.

Lack of a clear definition of “prescribed water body”

The definition of “prescribed water body” in Clause 41 of the Draft Regulations is wholly inadequate. It is not clear, for example, whether a running drain is a water course, when a depression in a paddock after rain becomes a pond or a watercourse, and at what point a puddle becomes a pond.

An important case in point is the status of the troughs between the beds in “raised bed” agriculture. These are designed to channel water. At what point do they become a constraint on chemical spraying?

The issue is particularly important in wetter parts of the state, where rain is relatively frequent and surface water can remain on the ground for quite some time. If decisions on every bit of such water, running or stationary, are to rest on the opinion of a local agency official it will make for regulations which will either bog the whole process of chemical use down in the courts, or simply prevent use of chemicals in those parts of the state.

There must be much clearer definition of the term “prescribed water body” in the Draft Regulations, to remove all ambiguity with regard to what water bodies are “prescribed” for the purposes of spray control.

Discrimination between chemical users

The single biggest shortcoming in the Draft Regulations is the fact that they exempt two very important categories of chemical spray users from any legal restriction or liability

whatsoever. These are the management authorities for rail and public road easements, and people who apply chemical spray from hand held equipment.

There has been no reason provided for the blatant discrimination between private and public land owners. There is certainly no less risk to human health or community interests from chemicals sprayed onto rail or public road easements, than there is from the same chemicals applied to private land. In fact it is arguable that road and rail easements are typically much closer to “at risk” premises such as schools and offices, than are farms.

Nor is there any explanation of why chemicals which are applied from aircraft or tractors are more dangerous than those applied from hand held equipment. In fact it is arguable that suburban gardeners who apply chemicals from hand held equipment, are likely to be much more “amateurish” than primary industry “professionals”, and to operate in closer proximity to schools and other “at risk” premises, and therefore to represent more of a risk to public health.

The Draft Regulations should make no distinction between farmers and other primary industry land owners on the one hand, and rail and road managers and users of hand held equipment on the other, in the application of restrictions on chemical spraying.

Impractical notification requirements – neighbour numbers and lead time

The Draft Regulations require land owners intending to apply chemical spray aerially or from tractors, to notify all occupiers of premises within 100m of the land to be sprayed, at least 2 days and no more than 28 days before application. One exception to this is where a “need” for spraying could not have been “reasonably anticipated” by the 2 days and it would therefore be “impracticable” to give 2 days notice. In that case notice of 3 hours is required. The only other is where notifiable land owners have agreed to forego their “entitlement” to notification.

In more fertile parts of Tasmania, where farms are smaller, the number of properties with land within 100m of land to be sprayed can be substantial, and this requirement can present a serious logistical problem for farmers with limited management and staff time and resources.

Similarly farms adjoining rural subdivisions or urban settlement can have a massive number of properties within 100m of their boundaries. Specific examples are a farm in the Burnie area with 44 other properties within 100m of its boundaries, and a farm in the Scottsdale area with 22.

Quite apart from the issue of notification numbers, the requirement for a minimum notification lead time is nonsensical. A major problem for farmers wishing to spray is finding a window of opportunity to do so when there is little or no breeze and no rain. In other words it is not so much a matter of establishing a “need” for spraying, so much as

finding an “opportunity” to do so. Two days is far too long a lead time to forecast weather conditions accurately at a property level. Farmers take the opportunity when they can. Even 3 hours is nonsensical if good conditions develop at night and need to be capitalised on before morning, particularly if notification is required in numbers.

The Draft Regulations should limit notification requirement to once per year (calendar or financial) with notification instrument to be hard copy notice delivered to houses on each of the premises within 100m of land which may be sprayed during the ensuing 12 months.

Impractical notification requirements – neighbour attitude

The Draft Regulations make it possible for notifiable land owners, who do not for their own reasons (philosophical or other) want spraying to occur in the vicinity, to put farmers at risk of prosecution under the regulations by denying that they have received notification. This leaves a farmer wishing to spray, with very few options other than having notification delivered by registered mail, a massively expensive and time consuming process.

The Draft Regulations should rule that a Statutory Declaration that hard copy notification has been left at the homes of neighbours, will be accepted as evidence that notification has been delivered to notifiable premises.

Difficulty of enforcement

The Draft Regulations provide gaping loophole with regard to provisions relating to residue levels (Clause 41).

The prescribed residue levels relating to water bodies, schools, hospitals, offices, etc, relate only to residue which results from aerial or ground (ie. tractor based) spraying. Any residue from hand held spraying equipment is by definition not a “prescribed” residue.

In the circumstances, a land owner who suspects (or knows) that aerial or tractor based spraying has left a residue on adjoining premises simply has to follow up with by spraying along the boundary of his or her property with hand held equipment with the same chemical, to “legitimise” the residue, and confound any prosecution.

The exemption from regulation of spray from hand held equipment leads to a very obvious and easy way for chemical users to circumvent the Regulations.

The Draft Regulations should cover all chemical spraying, including that from hand held equipment to close what is currently a gaping loophole.

COMMENT ON PROCESS

Most if not all of the deficiencies in the Draft Regulations, identified here, could have been avoided with proper consultation with chemical users or their representatives at the drafting stage.

The poor quality of the Draft reflects on the one hand a rush job, and on the other an almost total lack of consultation with users or user representatives.

The TFGA recommends strongly to the Government that it re-draft the Draft Regulations completely, and convene a Working Group of chemical user representatives to provide it with advice in doing so.

CONCLUSION

The TFGA is not averse to the regulation of chemical spraying. In fact we believe the introduction of good regulations is timely from the point of view of farmers and other primary industry land managers. Good regulations will provide security for farmers who need to use chemical sprays, in an atmosphere of increasing community concern relating to the use of chemicals in general.

However, poor regulations do nobody any good – farmers or the community. Regulations which make arbitrary distinctions between chemical users do little to protect community health, and can cause massive problems for legitimate farm businesses.

The Draft Regulations the Government has released are very poorly constructed. They are deficient in a number of areas and for a number of reasons which have been discussed in this submission.

The TFGA believes that the best course of action in the circumstances is for the Government to withdraw the Draft and restart the process, with far closer consultation at an earlier stage with organisations representing spray users. Apart from the TFGA, these include the Forest Industries Association of Tasmania, the Tasmanian Agricultural Productivity Group, the Spraying Contractors Association, Tasmanian Fruit Growers and the Vineyards Association of Tasmania.

The TFGA looks forward to participating in such a process.

RECOMMENDATIONS

The TFGA makes the following recommendations strongly to the Government.

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- 2. There must be much clearer definition of the term “prescribed water body” in the Draft Regulations, to remove all ambiguity with regard to what water bodies are “prescribed” for the purposes of spray control.*
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delivered to houses on each of the premises within 100m of land which may be sprayed during the ensuing 12 months.

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