

Agrichemical rules for Northland – Advice for growers - July 2019

Background

Northland Regional Council has recently amended its Regional Plan, including the rules for agrichemical application.

That means the rules that growers have been operating under since 1998 (*Operative rules*) have changed.

This advice is to assist growers in ensuring that the new rule requirements are complied with- as set out in the table below.

However the status of the new rule (*Proposed rules*) is in a transition stage as some of the provisions have been appealed to the Environment Court by HortNZ and a number of other parties.

Until the appeals are resolved the provisions that apply are somewhat complex, with a mix of both existing and new provisions apply.

Where provisions of the rule are under appeal the Council will assess any complaints and non-compliance on a case-by case basis taking into account factors such as the location, nature and severity of the non-compliance, noting that the Council has discretion to enforce any plan provisions how it sees fit.

If the conditions of the rule cannot be met, then a discretionary activity resource consent is required.

A full copy of Rule 6.5.1 is available on the Council website at this link:

<https://www.nrc.govt.nz/media/14292/proposed-regional-plan-decisions-version-website-20190530.pdf>

Comparison of operative rules with new proposed rules, matters under appeal and recommended grower actions

| Operative rules (Previous requirements) | Proposed rules (New requirements) | Changes in new rule | Under appeal | Recommended grower actions |
|---|---|---|--|--|
| Meets label requirements | | No longer specified but growers may be required to meet for other regulations | | |
| All steps taken to avoid remedy or mitigate adverse effects beyond the boundary | Discharge does not result in noxious dangerous, offensive or objectionable effects beyond the boundary of the property | The proposed rule is more stringent in that it links to noxious dangerous, offensive or objectionable effects which require an assessment to determine if they have occurred. | Yes: Appeal seeks that all reasonable steps be taken to minimise potential for noxious dangerous, offensive or objectionable effects beyond the boundary of the property | Ensure that all steps are taken to ensure that the potential for drift beyond the boundary is limited and that no adverse effects can arise. |
| Has valid qualification e.g.GROWSAFE training | Specifies GROWSAFE training or equivalent | Provision now stipulates the required training rather than relying on a schedule | Yes: Appeal seeks deletion of the words 'or equivalent'. | Ensure that all applicators have required training |
| Meets specified provisions in NZS8409:1999 | Undertaken in accordance with NZS8409:2004 Sections 5.3, Appendix L.4, Appendix S and Appendix C.9 | Note the later version of NZS8409 is referred to. Also specified section | No | Need to meet the specified sections of NZS8409:2004 |
| Records shall be kept as per NZS8409:1999 | Records to be kept in accordance with Appendix C9 of NZS8409:2004 | Similar requirement | No | Ensure that records are kept Check Appendix C9 of NZS8409:2004 |
| Notification Public places Where spraying to more than 200m of public road or public place, notice via newspaper or door-to door to properties within 30 metres at least one week prior. Specifies details of notification | Notification Backpack spraying on roadside fence lines – no requirements Other spraying in road and rail corridors requires public notice or letter box drop within 30m from area to be spray at least 7 days prior. It specifies the details required for notification. | Increase in notification requirements if doing more than backpack spraying outside property | Yes: Appeal seeks the exclusion for all ground based spraying on roadside of property | Exercise care when spraying in public place – ensuring that operative provisions are met. |

| Operative rules (Previous requirements) | Proposed rules (New requirements) | Changes in new rule | Under appeal | Recommended grower actions |
|--|--|--|---|---|
| Signage signs Vehicles in public places must display signage | Public places If within 100m of public amenity areas signage must be placed in prominent Vehicles in public places must display signage | Increased requirement for signage near public amenity areas | No | Display signs in public places as required in proposed provisions |
| Notification Sensitive area within 30m not less than 18 hours prior | Notification requirements vary according to spraying method See table below for requirements. Notification is to be given no less than 24 hours and not more than three weeks before spraying. | Distance is now 50m of spray sensitive area Can be undertaken by management company or packhouse operator | Yes: Notification is to be given no less than 12 hours and not more than three weeks before spraying. | Use notification table in new plan See below |
| Spray plan prepared | Annual spray plan required | Continuation of existing provision | No | Spray plan required |
| No 24D Ester between 1 May and 31 August | Similar provision | Continuation of existing provision | No | Note limitations of spraying 24D |
| | There is no direct discharge into or onto water | New requirement– applies now | No | Ensure that the provision is met with no direct discharges into or onto water |
| | Where spraying is within 100m of spray sensitive area undertake a risk assessment to determine measures to minimise adverse effects on spray sensitive areas | New requirement – applies now | No | Use NZS8409:2004 Table G1 to assist in risk assessment and determine appropriate methods |
| | Where spraying is within 100m of spray sensitive area only apply when wind direction is away from spray sensitive area | New requirement | Yes: Appeal seeks that the provision be deleted | Ensure that risk assessment considers all appropriate methods to minimise adverse effects |
| | Where spraying is within 100m of spray sensitive area only use nozzles that provide 'coarse' spray quality | New requirement | Yes: Appeal seeks that the provision be deleted | Ensure that risk assessment considers all appropriate methods to minimise adverse effects |

Spraying notification requirements – (Not subject to appeal so must be implemented now)

| Spray method | Properties to be notified | Notification requirements |
|---------------------------------------|---|---|
| Hand-held spraying | Nil (unless public amenity area, public road corridor or rail corridor under the specific requirement above) | Nil (unless public amenity area, public road corridor or rail corridor under the specific requirement above.) |
| Ground-based spraying | Any property with a spray-sensitive area within 50m of spraying including when spraying is taking place in public amenity areas but excluding when the spraying is taking place in a public road corridor or rail corridor. | Notification: a) is to be undertaken by the owner or occupier of the property where agrichemicals will be applied unless delegated to the applicator, management company, forest manager, or pack house operator, and b) is to be in writing (which can include email or other electronic means) or by telephone, and c) includes: <ol style="list-style-type: none"> i. the days and times during which the agrichemical application is likely to take place, including alternative days and times if the weather is unsuitable, and ii. the contact details of the owner or occupier of the property, or applicator, or management company forest manager, or packhouse operator, and iii. the details of agrichemicals being applied, and iv. indication of any specific hazards (including toxicity to bees), and v. the application method. |
| Aerial application | Any property with a spray-sensitive area within 200 metres of the spraying, including when spraying is taking place in public amenity areas, but excluding when the spraying is taking place in a public road corridor or rail corridor. | |
| Granules, gels and agrichemical baits | Any property with a spray-sensitive area within 30 metres of the agrichemical application, including when agrichemical application is taking place in public amenity areas, but excluding when the agrichemical application is taking place in a public road corridor or rail corridor. | |

Spray sensitive areas:

The provisions in the plan are dependent on the definition of spray sensitive areas which determines notification and spray plan requirements.

Spray sensitive areas are:

- 1) Residential buildings and associated garden areas, and
- 2) schools, hospital buildings and care facilities and grounds, and
- 3) amenity areas where people congregate including parks and reserves, and
- 4) community buildings and grounds, including places of worship and marae, and
- 5) certified organic farms, and
- 6) orchards, crops and commercial growing areas, and
- 7) water bodies used for the supply of drinking water and for stock drinking, and
- 8) wetlands and significant areas of indigenous vegetation and habitats of indigenous fauna as defined in the Regional Policy Statement for Northland, and
- 9) apiaries.

General advice to growers to ensure compliance with the rules:

- Prepare your spray plan (Refer to NZS8409 Appendix M4) in particular identify if there are any spray sensitive areas near you. (Refer to definition in the Plan of spray sensitive areas below.)
- Prepare a risk management plan detailing measures to minimise risk of spray-drift on spray sensitive areas (Refer to Table G1 of the *New Zealand Standard. Management of Agrichemicals (NZS 8409:2004)*)
- Make sure you and your staff meet training requirements
- Make sure you are meeting best practice provisions in NZS8409 Use – Part 5.3, Storage – Appendix L4, Disposal – Appendix S, and Records – Appendix C9
- Notify neighbours and ‘spray sensitive areas’ within at least 12 hours, but preferably 24 hours prior – refer to notification table below for distances and form of notification
- Carefully consider if the application could create noxious, dangerous, offensive or objectionable odour, smoke, spray or dust beyond the boundary and what steps will be taken to reduce that risk
- Ensure no discharges into or onto water
- If spraying near public amenity areas or road and rail corridors note the additional requirements

Interpretation of noxious, dangerous, offensive and objectionable effects

The rule for agrichemical application requires consideration of noxious, dangerous, offensive and objectionable effects. The Plan does not include definitions for these terms as the determination of such effects requires an objective assessment. The Regional Council’s investigation of a complaint concerning noxious, dangerous offensive or objectionable discharges will depend upon the specific circumstances.

However the following descriptions assist to determine if such an effect will be created.

Noxious, dangerous: The Concise Oxford Dictionary defines ‘noxious’ as “harmful, unwholesome”. Noxious effects may include significant adverse effects on the environment (for example, on plant and animal life) even though the effects may not be dangerous to humans. ‘Dangerous’ is defined as “involving or causing exposure to harm”.

Dangerous discharges include those that are likely to cause adverse physical health effects, such as discharges containing toxic concentrations of chemicals. WorkSafe New Zealand’s “Workplace Exposure Standards and Biological Exposure Indices, November 2018, 10th Edition” can be used for interpreting the terms ‘noxious’ and ‘dangerous’.

Offensive, objectionable: ‘Offensive’ is defined as “giving or meant to give offence; disgusting, foul-smelling, nauseous, repulsive”. ‘Objectionable’ is defined as “open to objection, unpleasant, offensive”. Case law has established that what may be offensive or objectionable under the RMA cannot be defined or prescribed except in the most general of terms. Each case will depend upon its own circumstances. Key considerations include:

- i. location of an activity and sensitivity of the receiving environment – such as rural compared to urban environment
- ii. reasonableness –should be determined by an ordinary person who is representative of the community at large and neither hypersensitive nor insensitive; and
- iii. existing uses – it is important to consider what lawfully established activities exist in an area, that is, if a new activity requires a permit, the effect of existing discharges of contaminants into air should be considered.

If the discharge is found to be offensive or objectionable, then enforcement action may be taken. This could be in the form of an abatement notice, infringement notice, enforcement order or prosecution. In the case of a permitted activity causing an offensive or objectionable discharge, a resource consent may be required to allow the discharge to continue.