



Agrichemical rules for Bay of Plenty Region – Advice for growers - July 2019

Background

Bay of Plenty 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 2003 (*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 rules cannot be met, then a controlled activity and a resource consent is required under Rule AQ R25 of the proposed plan.

A full copy of the proposed provisions is available on the Council website [here](#)

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

The Operative Permitted Activity Rule 13 applies to application of agrichemicals by techniques other than non-motorised hand held and aerial applications so is the rule that most growers have been working under since 2003.

New Proposed Rule AQ R15 requires different provisions for handheld non-motorised, hand held motorised or low pressure boom. The following comments set out the requirements for 'other types of application' – including ground based and aerial that are used by growers. If you are undertaking non-motorised, hand held motorised or low pressure boom applications refer to the rule for the requirements.

The table compares the operative rule with the new proposed rule and how the changes will affect growers.

Operative Rule 13 (Previous requirements)	Proposed rule AQ R15 (New requirements)	Changes in new rule	Under appeal	Recommended grower actions
Discharge must not result in harmful concentrations of agrichemicals beyond the boundary of the subject property or into water	The discharge must not be noxious or dangerous, offensive or objectionable beyond the boundary of the subject property , in any non- target <i>water body</i> , or in any non-target watercourse listed in Schedule 3 of this regional plan	Amended to focus on noxious or dangerous, offensive or objectionable – see interpretation on page 9	Yes: Seeks that all reasonable steps be taken to minimise the potential for noxious or dangerous, offensive or objectionable beyond the boundary of the subject 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.
Any ground based contractor must hold a current GROWSAFE Registered Chemical Applicators Certificate or equivalent	Persons carrying out spraying of agrchemicals , other than the use of hand-held application methods, must be certified by an industry approved training programme, designed to encourage best practice to prevent spray drift in accordance with New Zealand Standard 8409:2004 (or its replacement or amendment)	No specific provision for contractors	Yes: Appeal seeking clarification or specification as to what an 'industry approved training programme' would be. Approved by whom? Seeks reference to GROWSAFE training.	Ensure that all applicators have appropriate training
Any person, other than contractor, applying agrichemicals that are dangerous poison or deadly poison must hold a current GROWSAFE Introductory Certificate or be under direct	Provision above applies in respect to training	Training needed but no specific statement of required level/course	As above	Ensure that all applicators have appropriate training

supervision of someone holding current GROWSAFE Applied Certificate				
Ensure that the application complies with NZS8409:1999	Advice note at end of rule states that users should comply with NZS8409:2004 Management of Agrichemicals	Provision has been amended to only be an advice note which has no statutory status.	Yes: Appeal seeks that NZS8409:2004 Management of Agrichemicals has status in the rule	Meet the relevant sections of NZS8409:2004 to ensure compliance with HSNO.
Occupier of adjoining property within 50m of agrichemical use must be notified no later than 12 hours prior. Motorised boom applications exempt if meet conditions. Rule states notification requirements.	See table below for notification requirements	Similar – 50m and 12 hours same as previous. No exemptions for boom sprayers	No	Meet notification requirements in table below
Where application is on public land, public roads or railways different notification requirements apply. At least 1 week prior by public notice or other method (Refer Schedule 2)	Condition 4 sets out requirements for notification which are set out in the table on page 7 for notification of applications on both on public and private land.		No	Meet notification requirements in table on page 7
Signage for public places is set out in Schedule 2 requiring: <ul style="list-style-type: none"> • Agrichemical used • Time of application • Time for safe re-entry • Name and contact details of applicator. 	Where agrchemicals are sprayed on public amenity areas signs must be displayed at every entrance where the public usually have entry to the area where the agrchemical is being sprayed (except where the entrance is from private property). Where agrchemicals are sprayed on other areas, signs must be displayed at the main entrance to the property. Signs required by this condition must clearly state: (i) “CAUTION – SPRAYING IN PROGRESS” or similar wording	Additional requirements for the actual signs	Yes: Seeks separate provisions for public and private property. Delete: Where agrchemicals are sprayed on other areas, signs must be displayed at the main entrance to the property Seeks to add new provision as set out below	Ensure that signage is used when spraying near public amenity areas. Maintain spray signage at entrance to property

	<p>(ii) the name and type of agricultural used</p> <p>(iii) a start and end date for spray operations</p> <p>(iv) the name and phone number of the person carrying out the spraying</p> <p>(v) that while signs are in place, it is not safe to enter</p> <p>Any vehicles being used to apply agricultural spray on public amenity areas must display prominent signs front and back that clearly state “CAUTION – SPRAYING IN PROGRESS” or similar wording</p>			
<p>Signage to be in place on boundary when application adjoining public roads and places 24 hours before and removed when safe to re-enter. Rule states signage requirements. Different requirements for boom sprayers.</p>	<p>Where agricultural are sprayed within 50 metres of any public amenity area (ground-based application or drone application) complying with condition 1(c)) or 200 metres (aerial application) excluding drone application complying with condition 1(c)), signs must be prominently displayed on the boundary of the public amenity area and must clearly state “caution – spraying in progress” or similar wording</p>	<p>New rule requires signs when application within 50m of public amenity areas rather than ‘adjoining’ roads and public places.</p>	<p>Yes: HortNZ seeks that the signage provisions for private property are separate from public places with no requirement to remove signs.</p> <p>Where agricultural are sprayed on areas other than public amenity areas, as a minimum, signs must be displayed at the entrance to the property stating:</p> <p>Agricultural spraying will be undertaken:</p> <p>i) a start and end date for spray operations</p> <p>ii) the date when it is safe to re-enter the area</p> <p>iii) the name and type of agricultural used</p> <p>iv) the name and phone</p>	<p>Ensure that signage is in place where spraying within 50m of a public amenity area.</p>

			<p>number of the person carrying out the spraying</p> <p>NOTE: Additional signage may be placed in specific areas being sprayed within the property at the owners/ managers discretion.</p>	
	<p>Signs required by 3(a) or 3(b) should remain in place until all airborne spray has settled and the agricultural has dried on its target surface. Signs must be removed within 5 days once the area is safe to re-enter.</p>	New provision	<p>This provision wouldn't apply to private property if the new provision separating public from private is accepted.</p>	<p>Meet current signage requirements</p>
	<p>Where the use of the agricultural is for the prevention, eradication or management of unwanted organisms or pests the agricultural must be used under the direction of the responsible authority under the Biosecurity Act 1993.</p>	New provision	<p>No appeals</p>	<p>Note in event of a biosecurity incursion.</p>
	<p>Where the agricultural is sprayed using drone application, the drone must not operate more than 10 metres above the target while agricultural are being distributed from the drone. If this condition cannot be complied with, the spray method is aerial application, and conditions relevant to aerial application must be complied with</p>	New provision	<p>No appeals</p>	<p>If using drones for applications note different requirements if flying under or over 10m above target.</p>
	<p>Spray Risk Management Plan</p> <p>Prior to the agricultural spraying, a spray risk management plan must be prepared and implemented by the owner/occupier or agent.</p>	New provision	<p>Yes - in part</p> <p>The appeal only seeks to change the provision which specifies who the plan should be provided to: - to the</p>	<p>Prepare spray risk management plan</p> <p>Use NZS8409:2004 Table G1 to assist in risk assessment and determine appropriate methods</p>

	<p>The spray risk management plan must contain the following information:</p> <p>A plan or map identifying the location of any sensitive areas within 50 metres of the land being sprayed by ground based application or drone application (complying with condition 1(c)), or within 200 metres of the land being sprayed by aerial application (excluding drone application complying with condition 1(c)).</p> <p>Areas to be sprayed, type of agricultural likely to be used during the year and the times of year that spraying is likely to occur.</p> <p>Strategies used to avoid contamination of sensitive areas.</p> <p>Strategies to mitigate any spray drift caused by particular weather conditions,</p> <p>Strategies to manage any specific hazard associated with the agricultural to be sprayed (eg. toxicity to bees).</p> <p>The spray risk management plan must be reviewed and updated each year that spraying will be carried out.</p> <p>The spray risk management plan must be made available upon request within 20 working days of such a request being made.</p>		Regional Council and to potentially affected parties	
--	---	--	--	--

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

Spray method	Properties to be notified	Notification requirements
Hand-held spraying	Nil	Nil (unless public amenity area, public road corridor or rail corridor under the specific requirement above.)
Ground-based spraying drone application no more than 10 metres above target	The owner/occupier or agent must notify the occupier of any properties within 50 metres of where the agricultural is being sprayed	<p>Notification:</p> <p>EITHER</p> <p>(i) by notification, required no earlier than 72 hours, or 20 days for spraying carried out on plantation forestry or in a conservation area, and no later than 12 hours before the agricultural spraying. Notification must include the following:</p> <ul style="list-style-type: none"> • the address and location of proposed application • the date/s of proposed application • name and type of agricultural to be applied • name and phone number of person carrying out the spraying. <p>OR</p> <p>(ii) according to a notification agreement with the occupier.</p> <p>The notification agreement must:</p> <ul style="list-style-type: none"> - contain (as a minimum) method of notification and minimum time for notification prior to spraying - be recorded in writing and signed by all parties -be reviewed and re-signed annually <p>Details of notification (including but not limited to date and time of notification, parties notified, method of notification) must be recorded.</p> <p>Where agricultural spraying is being carried out by any person other than the owner/occupier or agent responsible for notification, the person carrying out the spraying must confirm that notification requirements have been met before spraying takes place.</p>
Aerial application including drone	The owner/occupier or agent must notify the occupier of any properties	As above

application more than 10 metres above target	within 200 metres of where the agricultural is being sprayed	
Public amenity areas	Publicly notify (according to section 2AB(1)(a) of the Act)	Where agriculturals are sprayed on public amenity areas , the owner/occupier or agent must publicly notify (according to section 2AB(1)(a) of the Act) the agricultural spraying no earlier than 10 days or 20 days for spraying carried out on plantation forestry or in a conservation area, and no later than 24 hours before the agricultural spraying. Notification must include the following information: - The name and type of agricultural used. - A start and end date for spray operations. - Contact details of the authority responsible for the spraying

Sensitive areas:

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

Sensitive area means an activity that is particularly sensitive to adverse effects associated with air contaminant discharges either due to the vulnerability of the population or area exposed to the contaminant, or due to the potential for people to be exposed for prolonged periods and may include:

- (a) residential buildings and areas (including marae)
- (b) childcare centres, schools, educational facilities
- (c) hospitals, nursing homes, aged care facilities
- (d) offices, consulting rooms, gymnasiums, community centres
- (e) hotels, motels, caravan parks, camping areas, tourist accommodation
- (f) correctional facilities
- (g) public amenity areas**
- (h) manufacturing or storage of food or beverages
- (i) manufacturing or storage of electronics
- (j) public water supply catchments and intakes.
- (k) incompatible crops or farming systems (e.g. organic farms, greenhouses)
- (l) household water supplies (including roofs from which a water supply is obtained).

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 Agriculturals (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 ‘sensitive areas’ within at least 12 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 the terms noxious or dangerous, offensive or objectionable

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 or dangerous

The dictionary definition of ‘Noxious’ means harmful, unwholesome. ‘Dangerous’ means involving or causing exposure to harm. In terms of agrichemical applications then means it should not be harmful to people, property, or the *environment*. This may include, but is not limited to, the following:

- (a) Human health *effects*.
- (b) Contamination of potable water supplies where the concentration of contaminant in the water supply is at a level that exceeds the safe level for human consumption.
- (c) Exceedance of a maximum residue limit for an **agrchemical** on, or in, food or stock feed at harvest or slaughter.
- (d) Adverse *effects* on ecosystems including *water bodies*. This includes exotic and indigenous flora and fauna.
- (e) Damage to crops or plants where *contaminants* have affected the growth or quality of the crop such that levels exceed safe levels for human consumption.
- (f) A discharge of **fertiliser** or **agrchemical** spray that compromises the organic status of another property
- (g) Damage to paintwork, windows or surfaces from deposition of airborne *contaminants*.
- (h) Reduced visibility that endangers the passage of any vehicle, aircraft, or *ship*.

Offensive or objectionable

The dictionary definition of ‘offensive’ is giving or meant to give offence, disgusting, foul- smelling, nauseous, repulsive. ‘Offensive’ is defined as ‘open to objection, unpleasant, offensive.

To determine if a discharge is offensive or objectionable, the Regional Council will make an overall judgment that considers the FIDOL factors as follows:

- Frequency – how often an individual is exposed.
- Intensity – the strength or concentration.
- Duration – the length of exposure.
- Offensiveness/character – the hedonic tone (pleasant, neutral, unpleasant) or type.
- Location – the type of land use and nature of human activities in the vicinity of the source.

When assessing discharges (odour, smoke, dust and **particulates**) the Regional Council will have an experienced, warranted Council Officer will make an assessment of the situation taking into account the FIDOL factors. If the discharge is deemed to be offensive or objectionable by the warranted Council Officer, the discharger may be asked to take whatever action is necessary to avoid, remedy or mitigate the effects of the discharge on the *environment*.