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Providing Chemical Use Information.

Introduction

Many chemical users in Victoria rely on information provided by others when selecting and using agricultural and veterinary (agvet) chemicals on their properties.

Private agronomists, industry representatives, chemical resellers, chemical company representatives, DPI agronomists, consultants, and sometimes neighbours provide advice about chemical use, and have a duty to ensure that the information they provide is accurate and reliable.

Methods of providing information

There are various ways to provide chemical use information. Information can be communicated verbally, as written advice notes, in publications and articles, by fax or by other means. Different risks apply to these methods, as some present a higher chance of advice being misinterpreted or forgotten.

Written information is best because it reduces the risk of information being misinterpreted or forgotten. Information can be referred to by the chemical user at any time, reducing the need to rely on their memory (which can cause a mistake). It also provides a record of the advice given, that can be used should things go wrong to determine whether the problem occurred as a result of the advice provided or from other factors.

Obligations

Laws exist to protect chemical users who incur damage or cause contamination of crops or livestock from the misuse of chemicals in accordance with the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*. Section 59 of the Act addresses the provision of 'False or Misleading Statements'. Any person who provides chemical use information that financially disadvantages another person who relies upon it could find themselves fined or exposed to civil litigation for the recovery of any losses incurred.

DPI can prosecute a person for providing false or misleading information under the provision of *False or Misleading Statements*. In this worst case scenario, the person would be sued to recover the financial losses incurred as a result of the chemical user relying upon the information.

On-label information

Labels provide detailed information about what agricultural produce the chemical can be used on, the pests that will be controlled or the effect the chemical will have, application rates, any withholding periods that apply, and any specific precautions or restrictions that apply.

Providing on-label information presents the lowest level of risk. Any person who provides information about chemical use that is entirely consistent with the product label has a high degree of risk protection because the label is a legal document that is warranted by the product manufacturer.

Off-label information

The provision of chemical use information that is not specified on the chemical product label is regarded as off-label information.

The provision of off-label information is riskier than providing on-label information. There are three areas where the provision of off-label chemical use information is an offence. These are:

1. When the information, if relied upon, causes the person who relied upon it to commit an offence under the Act or the Regulations under the Act.
2. When the information, if relied upon, leads to the contamination of stock or agricultural produce.
3. When the information, if relied upon, injures plants to which the chemical is applied.

Each of these areas is explained in more detail below.

Providing advice that leads to an offence

If a person/organisation provides information about chemical use that causes a person who relies upon it to commit an offence under the Act or the Regulations under the Act, the person/organisation providing the information has also committed an offence under Section 59(2)(a) of the Act.

Example: The agricultural chemical *Paroxone® 250 Herbicide* contains the active ingredient paraquat. All paraquat products are Schedule 7 Poisons (Dangerous Poisons) (S7). In

Victoria, all S7 poisons are 'restricted use' chemicals and must be used in strict accordance with the label. Any off-label use is an offence under Section 25A(1)(b) of the Act.

If an agronomist provided information that *Paroxone® 250 Herbicide* could be used post sowing/pre-emergent to control Brome Grass in cereal crops, this would be off-label information. If a person relied upon this information and actually applied *Paroxone® 250 Herbicide* post sowing/pre-emergent to control Brome Grass in a cereal crop, they have committed an offence. As a result of the chemical user committing an offence by relying on the information provided by the agronomist, the agronomist also committed the offence of making *False or Misleading Statements*.

Contamination of stock or agricultural produce

If a person/organisation provides information about chemical use that causes the contamination of stock or agricultural produce, the person/organisation providing the information has also committed an offence under Section 59(2)(b) of the Act.

Example: A carrot grower was having trouble late in the season managing broadleaf weeds. His neighbour suggested that he use a herbicide containing *linuron* to clean them up. The grower used a *linuron* product off-label and controlled the weeds. Two weeks later, he harvested the carrot crop.

Subsequently, samples of the carrots were taken from the market and tested for chemical residues (as part of the normal process), and *linuron* residues were detected above the Maximum Residue Limit (MRL), meaning the carrots were contaminated with *linuron*.

This is a complicated example because the grower sold contaminated produce. Any remaining carrots may have a Contaminated Agricultural Produce Notice (CAPN) placed on them.

As for the contaminated carrots, because the grower relied upon the advice provided by his neighbour that a *linuron* herbicide could be used, and the reliance upon that advice led to the carrots being contaminated, the neighbour committed the offence of making *False or Misleading Statements*.

Injury to plants

If a person/organisation provides information about chemical use that causes "injurious effect" (damage) to the plants to which the chemical is applied, the person/organisation providing the information has also committed an offence under Section 59(2)(c) of the Act.

Example: A farmer subscribes to a newsletter that provides chemical use information. A recent issue suggested an off-label mix of chemicals for cereal seed treatment (using a foliar fungicide) that was cheaper than the registered seed treatment product, but contained the same active ingredients.

Keen to save money, the farmer treats his cereal seed with the mix, only to find that when the seed was sown, very poor germination resulted from the solvents in the foliar fungicide killing most seeds. The registered product for this use did not contain the harmful solvents.

Given that the farmer relied upon the information contained in the newsletter, and the reliance upon that advice led to many of the cereal seeds being injured, the author and/or newsletter publisher committed the offence of making *False or Misleading Statements*.

Maps and other information

Following an incident involving aerial spray drift of broadleaf herbicides over a field pea crop, the legislation relating to the provision of False or Misleading Statements has been amended to include any statement, document or other information provided in relation to the target area or bordering the target area.

Example: A pilot was hired to spray a cereal crop in a paddock adjoining the field pea crop to control wild radish. The pilot was given a map of the area that incorrectly labeled the field pea crop as the cereal crop.

As a result, the pilot was not concerned when the wind was blowing towards the field pea crop, because he relied upon the information on the map that showed the field pea crop as a cereal crop, and he assumed it would be unaffected by the herbicide.

While the map had nothing to do with the actual application of the chemical, and the wrongly labeled field pea crop was not the target of the spraying, the incorrect information on the map that was relied upon by the pilot led to the field pea crop being damaged by spray drift.

As the pilot relied on the map, which resulted in spray drift causing considerable damage to the field pea crop, this was considered an offence under Section 59(3) of the Act. In this case, the person who drew the map committed the offence of making *False and Misleading Statements*.

Duty of care

Any person who provides agvet chemical use information has a duty of care to ensure that:

- the information they provide is within their area of skill, expertise and employment
- the information they provide is accurate, unambiguous, qualified (if appropriate), and applicable for a specific period of time
- an accurate written record is made and kept of the information provided
- professional liability insurance is held (if appropriate).

Further References

- DPI Chemical Standards website - www.dpi.vic.gov.au/chemicalstandards
- APVMA website - www.apvma.gov.au
- DPI Chemical Standards Officers

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