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Pesticides Act 1999

Pesticide Control Order issued under section 38

1. Name

This Order is to be known as the **Pesticide Control (Termiticide) Order 2022**.

2. Authority for Order

This Order is made by the Environment Protection Authority under Part 4 of the *Pesticides Act 1999* (NSW).

3. Commencement

This Order commences on the date of publication in the NSW Government Gazette.

4. Revocation of Previous Order

The Pesticide Control (Termiticide) Order 2000 is revoked.

5. Objects

The objects of this Order are to:

- (a) authorise the persons described in clause 9 of this Order to use and possess pre-construction termiticide products containing bifenthrin or chlorpyrifos or both, subject to the conditions described in clause 10 of this Order;
- (b) revoke and replace the Pesticides Control (Termiticide) Order 2000.

6. Background

A chemical product that is a pre-construction termiticide product containing bifenthrin and a chemical product that is a pre-construction termiticide product containing chlorpyrifos have been declared to be “restricted chemical products” under regulation 45 and schedule 4 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth).

Section 94 of the Agvet Code, which is applied as a law of New South Wales by the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* (NSW), provides that a person must not, without reasonable excuse, supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction.

Section 4 of the *Pesticides Act 1999* (NSW) provides that a “restricted pesticide” means a pesticide that is a restricted chemical product within the meaning of the Agvet Code. Section 17 of the *Pesticides Act 1999* (NSW) provides that a person must not use or possess a restricted pesticide unless authorised to do so by a restricted pesticide authorisation or a pesticide control order.

7. Application

This Order authorises the use and possession of a pre-construction termiticide product containing bifenthrin or chlorpyrifos or both, subject to the conditions specified in this Order.

8. Definitions

In this Order –

Agvet Code has the same meaning as in the *Pesticides Act 1999* (NSW).

possession of a pesticide has the same meaning as in the *Pesticides Act 1999* (NSW).

pre-construction termiticide product containing bifenthrin or chlorpyrifos has the same meaning as items 6 and 7 in Schedule 4 to the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth).

timber pest management technician work has the same meaning as in clause 6(1)(h) of the *Pesticides Regulation 2017* (NSW).

use of a pesticide has the same meaning as in the *Pesticides Act 1999* (NSW).

9. Persons authorised

- (1) Only the following persons are authorised to use or possess a chemical product that is a pre-construction termiticide product containing bifenthrin or chlorpyrifos or both:
 - (a) a person who conducts a business of selling or supplying pre-construction termiticide products containing bifenthrin or chlorpyrifos or both, whether as an employee, contractor or self-employed person, subject to clause 10(a) of this Order;
 - (b) an authorised officer under Chapter 7 of the *Protection of the Environment Operations Act 1997* (NSW), subject to clause 10(b) of this Order; and
 - (c) a person who is authorised, pursuant to a licence or exemption under the *Pesticides Act 1999* (NSW) or the *Pesticides Regulation 2017* (NSW), to carry out timber pest management technician work, subject to clause 10(c) of this Order.

10. Conditions on the use of pre-construction termiticide product containing either bifenthrin or chlorpyrifos or both

- (a) A person referred to in clause 9(1)(a) of this Order may store or possess, but must not otherwise use, a pre-construction termiticide product containing bifenthrin or chlorpyrifos or both in the course of selling or supplying these pesticides;
- (b) A person referred to in clause 9(1)(b) of this Order may store or possess, but must not otherwise use, a pre-construction termiticide product containing bifenthrin or chlorpyrifos or both obtained in the exercise of powers under Chapter 7 of the *Protection of the Environment Operations Act 1997* (NSW);
- (c) A person referred to in clause 9(1)(c) of this Order may use or possess a pre-construction termiticide product containing bifenthrin or chlorpyrifos or both, but only in the course of carrying out timber pest management technician work that the person is authorised to carry out pursuant to a licence or exemption under the *Pesticides Act 1999* (NSW) or the *Pesticides Regulation 2017* (NSW) and subject to any conditions of that licence or exemption.

Karen Marler
Director Environmental Solutions – Chemicals, Land & Radiation
Environment Protection Authority
(as delegate of the Environment Protection Authority)

Notes

Words used in this Order have the same meaning as in the Pesticides Act 1999 (NSW), unless otherwise defined in this Order.

This Order will remain in force until it is revoked.

A person must not contravene a Pesticide Control Order – maximum penalty \$120,000 in the case of a corporation and \$60,000 in the case of an individual.