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Biosecurity (Fire Ant) Emergency Order 2023

under the

Biosecurity Act 2015

I, Scott Charlton, Chief Invasive Species Officer, with delegated authority of the Secretary under section 379(1) of the *Biosecurity Act 2015*, make the following emergency order under Part 5 of that Act.

Dated this 16th day of August 2023



SCOTT CHARLTON
Chief Invasive Species Officer
Department of Primary Industries
Department of Regional NSW

Part 1 Preliminary

1 Name of emergency order

This emergency order is the *Biosecurity (Fire Ant) Emergency Order 2023*.

2 Commencement

This emergency order commences at the time a copy of the order is published in the NSW Government Gazette.

3 Duration of emergency order [s 45(e), s 48]

This emergency order has effect for a period of 6 months from the date the order is made.

4 Emergency Zone [s 45(b), s 49]

The emergency zone in which the measures in this emergency order are to be implemented is the whole of the State of New South Wales (*Emergency Zone*).

5 Declaration of biosecurity emergency [s 44(1)]

A biosecurity emergency is declared from the time this emergency order commences.

6 Biosecurity matter and biosecurity risk [s 44(1), s45(a)]

- (1) The biosecurity matter which is the subject of the biosecurity emergency is fire ants.
- (2) The biosecurity risk that is the subject of the biosecurity emergency is the risk of an adverse effect on the economy, environment and the community that arises from the introduction, presence and spread of fire ants within the State of New South Wales.

7 Grounds for emergency order [s 44(1)]

The basis for being satisfied that there is a current biosecurity risk that may have a significant biosecurity impact is as follows:

- (a) in July 2023 fire ants were detected in Tallebudgera, Queensland, within six kilometres of the New South Wales border. Fire ant nests (124 nests in total) have been detected at 6 locations south of the fire ant infested area in Queensland, within 18 km of the New South Wales border between November 2022 and July 2023,
- (b) fire ants are prohibited matter throughout New South Wales,
- (c) there is a current and imminent risk that fire ants will move, or be moved via fire ant carriers, into New South Wales,
- (d) the movement of fire ant carriers into New South Wales has the potential to introduce fire ants into New South Wales,
- (e) the proximity of the detection to the New South Wales border indicates an increased likelihood that fire ants could spread into New South Wales through human assisted movement of carrier materials and natural spread,
- (f) the high number of nests detected in parts of the known infested area in Queensland increases the likelihood of flying mated female fire ants (new queens) contaminating fire ant carrier material being moved into New South Wales,
- (g) the biosecurity risk arising from the introduction and presence of fire ants in New South Wales may have a significant biosecurity impact to the economy, the environment, and the community because of the ability of fire ant colonies to harm ecosystems, reduce crop yields, harm human health, damage infrastructure, and prevent the use of outdoor and amenity areas.

8 Definitions

In this emergency order:

APVMA means Australian Pesticides and Veterinary Medicines Authority.

baled material includes baled hay, baled straw, baled sugarcane and baled silage.

certification assurance arrangement means a certification assurance arrangement or an interstate certificate assurance arrangement that enables a person authorised under a corresponding law of a State or Territory to issue a plant health assurance certificate that meets certain plant health quarantine conditions for trade between New South Wales and other States or Territories.

fire ant means the red imported fire ant *Solenopsis invicta*.

fire ant carrier means any of the following carriers of fire ant:

- (a) organic mulch,
- (b) soil and anything with soil on it,
- (c) baled material,
- (d) potted plants,
- (e) turf,
- (f) agriculture or earth moving machinery
- (g) mining and quarrying materials.

GIA means Greenlife Industry Australia Limited (ABN 59 634 584 017)

known infested area means the area in Queensland which is shown in yellow on the map published on the following NSW Department of Primary Industries website at the time this order commences:

<https://www.dpi.nsw.gov.au/biosecurity/insect-pests/fire-ants>.

Note. Schedule 1 to this emergency order contains a copy of the map and is included for information purposes only.

mining and quarrying materials means material that is a product or by-product of mining or quarrying, including chitters, coal fines, coal stone, decomposed granite, sand, gravel and overburden.

organic mulch includes manure, bark, wood chips, hay, straw, silage and sugarcane bagasse but does not include baled material.

plant health assurance certificate is an interstate biosecurity certificate issued in accordance with the requirements of a certification assurance arrangement.

plant health certificate means an interstate biosecurity certificate issued by an authorised officer under a corresponding law in a State or Territory that relates to plant biosecurity.

potted plant means a plant in a container that was grown or re-potted in potting media, and includes the container, the plant and the potting media, but does not include:

- (a) tissue culture, or
- (b) seedlings in plugs or cells used to grow or transport plants, with a volume of no more than 0.1 litres.

the Act means the *Biosecurity Act 2015*.

vigorously disturbed means agitating all the mining or quarrying material, using one of these methods of agitation:

- (a) crushing,
- (b) screening including by passing all the material through a screening bucket, grate or other sieve,
- (c) turning, or
- (d) washing.

9 Persons to whom the measures in this order apply [s 45(d)]

- (1) The emergency measures in Part 2 of this order apply to any person who deals with a fire ant carrier if, as a result of the dealing, the fire ant carrier enters the Emergency Zone from the known infested area, except where that fire ant carrier is transiting through a known infested area in accordance with clause 17.
- (2) The emergency measures in Part 3 of this order apply to authorised officers.

Part 2 Emergency measures [s 51]

10 Organic mulch and soil

Organic mulch or soil that has been present in the known infested area must not be moved into the Emergency Zone unless the following requirements have been met:

- (a) the organic mulch or soil was treated so that all parts of the mass were brought to a minimum temperature of 65.5° Celsius,
- (b) immediately following treatment, the organic mulch or soil was handled and stored in a manner that prevents infestation by fire ants,
- (c) the organic mulch or soil remains in conditions that prevent infestation by fire ants until it arrives in the Emergency Zone, and
- (d) the organic mulch or soil is accompanied by one of these certificates certifying that the measures in paragraphs (a) and (b) have been met:
 - (i) a plant health certificate, or
 - (ii) a BioSecure HACCP Biosecurity Certificate issued in accordance with the entry conditions specified in *BioSecure HACCP Entry Conditions Compliance Procedure Number: ECCPRIFA21*, published by GIA.

Note. A fire ant carrier will be taken to have been present in the known infested area in all circumstances where it has been in the area, including where the fire ant carrier has been grown, packed, sourced, stored or held in a known infested area for any period of time. This requirement is subject to the transit exemption in clause 17 of this emergency order.

11 Baled materials

Baled material that has been present in the known infested area must not be moved into the Emergency Zone unless the following requirements have been met:

- (a) the baled material was inspected and found to be dry and free of all soil,
- (b) the baled material was treated with an APVMA approved chemical for the control of fire ants in accordance with all label directions and permit conditions,
- (c) immediately following treatment, the baled material was handled and stored in a manner that prevents infestation by fire ants,
- (d) the baled material remains in conditions that prevent infestation by fire ants until it arrives in the Emergency Zone, and

- (e) the baled material is accompanied by a plant health certificate certifying that the measures in paragraphs (a), (b) and (c) have been met.

12 Potted plants

Potted plants that have been present in the known infested area must not be moved into the Emergency Zone unless the following requirements have been met:

- (a) the potting media that is part of the potted plant was treated with an APVMA approved chemical for the control of fire ants in accordance with all label directions and permit conditions,
- (b) the treatment of the potting media of the potted plant remains effective until the potted plant arrives in the Emergency Zone, and
- (c) the plant is accompanied by one of the following certificates certifying that the measures in paragraphs (a) and (b) have been met:
 - (i) a plant health certificate,
 - (ii) a BioSecure HACCP Biosecurity Certificate issued in accordance with the entry conditions specified in *BioSecure HACCP Entry Conditions Compliance Procedure Number: ECCPRIFA28*, published by GIA,
 - (iii) a plant health assurance certificate issued in accordance with the ICA procedure *ICA-39 Treatment of Bulk Growing Media and Potted Plants for Red Imported Fire Ant*.

13 Turf

Turf that has been present in the known infested area must not be moved into the Emergency Zone unless the following requirements have been met:

- (a) the turf was treated with an APVMA approved chemical for the control of fire ants on a commercial turf farm in accordance with all label directions and permit conditions,
- (b) the turf was harvested in accordance with all label directions and permit conditions for the APVMA approved chemical used to treat the turf,
- (c) immediately after harvesting, the turf was handled and stored in a manner that prevents infestation by fire ants,
- (d) the turf remains in conditions that prevent infestation by fire ants until it arrives in the Emergency Zone, and
- (e) the turf is accompanied a plant health certificate certifying that the measures in paragraphs (a), (b) and (c) have been met.

14 Agricultural or earth moving equipment

- (1) Agricultural or earth moving equipment that has been present in the known infested area, must not be moved into the Emergency Zone unless:
 - (a) in the period starting 48 hours before being moved the equipment was
 - (i) cleaned so that it was free from soil and any other fire ant carrier, and

- (ii) inspected and found to be free of fire ants, and
 - (b) the equipment is accompanied a plant health certificate certifying that the measures in paragraph (1)(a) have been met.
- (2) The measures in this clause do not apply to agricultural or earth moving equipment that is new and unused.

15 Mining or quarrying materials

Mining or quarrying materials that have been present in the known infested area must not be moved into the Emergency Zone unless:

- (a) the materials were vigorously disturbed at least once:
 - (i) every 21 days while the materials were in the known infested area, and
 - (ii) in the 24 hours before the materials were moved from the known infested area into the Emergency Zone, and
- (b) the mining or quarrying materials are accompanied by a plant health certificate certifying that the measure in paragraph (a) has been met.

16 Production of certificates

A certificate that is required by this Part to accompany a fire ant carrier being moved into the Emergency Zone must be produced for inspection when requested by an authorised officer.

17 Transit through a known infested area

The emergency measures in this Part do not apply to a fire ant carrier that has been moved into the Emergency Zone from the known infested area if the following requirements have been complied with:

- (a) the fire ant carrier was present in the known infested area for a period of less than 12 hours, and
- (b) the person dealing with the carrier has not stopped in the known infested area during transit except for obtaining supplies, including fuel, that are reasonably necessary for:
 - (i) the vehicle in which the fire ant carrier is travelling, or
 - (ii) the person in the vehicle, or
 - (iii) reasonably stopping to rest or have a meal, or
 - (iv) dealing with an emergency, and
- (c) the fire ant carrier remains in conditions that prevent infestation by fire ants until the carrier leaves the known infested area, including that the carrier is kept:
 - (i) off the ground to prevent fire ants crawling into or onto it, and
 - (ii) kept covered in a manner that prevents fire ants crawling into or landing on the carrier.

Part 3 Authorised officer powers

18 Authorised officer authorisations [s 50, s 122(1)(a), s 131]

- (1) At any place within the Emergency Zone an authorised officer is authorised to issue an individual biosecurity direction in the case of an emergency to direct a person to:
 - (a) stop a vehicle so that the authorised officer may inspect the vehicle and anything in it or on it, and
 - (b) permit the authorised officer to inspect the vehicle and any thing in or on that vehicle.
- (2) However, an authorised officer is only authorised to exercise the powers set out in subclause (1) with respect to the fire ant biosecurity emergency to which this emergency order relates.

Note. Section 122(1)(a) of the Act provides that an authorised officer can include certain directions in an individual biosecurity direction in the case of an emergency. The directions that can be included in the case of an emergency are set out in section 131 of the Act and include, directing a person to stop a vehicle and permit the vehicle to be inspected for biosecurity matter or a carrier.

Section 128 of the Act sets out the circumstances in which an authorised officer can issue an individual biosecurity direction. The authorised officer can give a direction if the officer reasonably believes the direction is necessary for a number of purposes, including:

- (a) to prevent eliminate or minimise a biosecurity risk,
- (b) to prevent, manage or control a biosecurity impact that has occurred, is occurring or is likely to occur,
- (c) to prevent, eliminate, minimise or manage a biosecurity risk posed by a dealing of the person, or suspected dealing of the person, with biosecurity matter, a carrier or a potential carrier,
- (d) to enforce, administer or execute the Act and any instrument made under the Act (such as this emergency order).

Schedule 1 – known infested area

