

Pesticides Act 1999

Pesticide Control Order issued under section 38

1. Name

This Order is to be known as the **Pesticide Control (PER90618) Order 2022**

2. Authority for Order

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

3. Commencement

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

4. Objects

The objects of this Order are to:

- (a) authorise those persons described in clause 8 to use 1080 products that are approved by PER90618 for use in NSW;
- (b) authorise those persons described in clause 8 to use 1080 liquid concentrate products that are approved by the PER90618 for use in NSW; and
- (c) specify the manner in which 1080 products and 1080 liquid concentrate products that are approved by PER90618 must be used in NSW.

5. Background

A chemical product that contains sodium monofluoroacetate (1080) has been declared to be a “restricted chemical product” as set out in 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*, provides that a person must not, without reasonable excuse, supply a restricted chemical product, or cause or allow 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* 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* 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.

6. Application

This Order authorises the possession and use of 1080 liquid concentrate products and 1080 products subject to the conditions specified in this Order, including the Schedule to this Order.

7. Definitions and interpretation

In this Order (including the Schedule to this Order) -

1080 means the chemical sodium monofluoroacetate (also known as sodium fluoroacetate).

1080 liquid concentrate product means any liquid concentrate APVMA registered chemical product, or product allowed for use under an APVMA permit for the control of vertebrate pests, that contains 1080 as its only active constituent.

1080 product means any non-liquid APMVA registered chemical product, or product allowed for use under an APVMA permit for the control of vertebrate pests, that contains 1080 as its only active constituent.

1080 program means the use of 1080 products at a location, for the control of vertebrate pests.

aerial application means applying a pesticide from an aircraft.

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

application site means the position of the 1080 product within the location.

apply a pesticide includes, but is not limited to, disperse, drop, lay, place, spread or otherwise apply the pesticide by any means, including by ground or aerial application.

approved label has the same meaning as in the *Pesticides Act 1999*.

APVMA means the Australian Pesticides and Veterinary Medicines Authority established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth.

APVMA permit means a permit as defined in section 109 of the Agvet Code.

attacked means mauled, killed or harassed.

Australian Qualifications Framework has the same meaning as in section 7 of the *Higher Education Act 2001*.

authorised agent means a person who is engaged by a landholder to take possession of 1080 products on the landholder's behalf and use 1080 products on the property of that landholder.

Authorised Control Officer means a person who:

- (a) either:
 - (i) holds a VET statement of attainment issued by NSW DPI's Registered Training Organisation or another Registered Training Organisation on completion of the training and assessment components of the Vertebrate Pest Management course; or
 - (ii) is employed by a public authority that has an EPA-approved system for evaluating and establishing recognised prior learning that is, at minimum, equivalent to obtaining accreditation for the successful completion of the training and assessment components of the Vertebrate Pest Management course; and
- (b) holds a certificate of completion issued by the NSW DPI within the previous five (5) years for completion for the training and assessment components of the Vertebrate Pesticide Accreditation course; and
- (c) holds a VET statement of attainment on completion of the training and assessment components of a Chemical Accreditation training program assessed at Australian Qualifications Framework levels 3 and 4 and that has been issued by a Registered Training Organisation. To maintain currency of level 3 Chemical Accreditation a person must complete refresher training every 5 years but for level 4 Chemical Accreditation only initial accreditation is required for the duration of their employment, functioning as an Authorised Control Officer; and
- (d) either:
 - (i) is a member of staff on an LLS, a Wild Dog Destruction Board, NSW DPI, NPWS, or another public service agency, and is currently employed as part of the Public Service under Part 4 of the *Government Sector Employment Act 2013* to enable that public service agency to exercise its functions; or
 - (ii) has obtained approval to operate as an Authorised Control Officer from an EPA employee appointed from time to time (in an ongoing, temporary, casual or acting capability) to the position of Senior Executive Band 1 and above within the EPA, prior to completing the training requirements in (c) above, for the purposes of this Order.

coordinated 1080 program means a 1080 program for the control of vertebrate pests that is overseen by an Authorised Control Officer coordinating the program and either takes place at multiple locations or involves multiple end users.

end user means a person who is authorised to use 1080 products in accordance with clause 8(2) of this Order.

EPA means the Environment Protection Authority (NSW).

EPA authorised officer means an authorised officer as defined in the *Protection of the Environment Operations Act 1997*.

formed entry point means a particular place that has been constructed to allow a person to enter the location. It excludes permanently closed or unauthorised entry points.

landholder means an owner, occupier or manager of land.

LLS means the Local Land Services as constituted under the *Local Land Services Act 2013*.

location means:

- (a) in the case of public places:
 - (i) subject to sub-paragraphs a(ii) and a(iii) of this definition, the whole of the property;
 - (ii) in the case of State forests, and LLS-managed travelling stock reserves – the area delimited by peripheral roads, formed tracks, property boundaries, rivers or internal fences of the State forest or LLS-managed travelling stock reserve where 1080 products are being applied; and
 - (iii) in the case of NPWS land or property included under a NPWS BPMS program – the area defined by a map in the Authorised Control Officer risk assessment for the 1080 program; and
- (b) in any other case:
 - (i) where the property is less than 100 ha – the whole of the property; and
 - (ii) where the property is 100 ha or more – the area, delimited by peripheral roads, formed tracks, property boundaries, rivers or internal fences, of the property where 1080 products are being applied.

nominated person means a person, of at least 18 years of age, who has written evidence of approval from a person authorised to use and possess 1080 products under clause 8(2) of this Order to collect 1080 products from an Authorised Control Officer on that person's behalf in accordance with this Order.

NPWS means the National Parks and Wildlife Service as defined under the *National Parks and Wildlife Act 1974* and also includes any person involved in the administration of that Act.

NPWS estate means the land reserved or acquired under the *National Parks and Wildlife Act 1974*.

NPWS land means NPWS estate, or land otherwise managed or leased by NPWS under the *Crown Land Management Act 2016* or the *Forestry Act 2012*.

NPWS BPMS program means a program listed in a Branch Pest Management Strategy or an equivalent pest management strategy of the NPWS.

NSW DPI means the NSW Department of Primary Industries.

ongoing in relation to 1080 programs means a 1080 program that is planned to continue indefinitely at a property and as part of which 1080 products are available continuously to vertebrate pests. 1080 products are still considered to be available continuously where they are removed during periods of high risk (e.g. school holidays) or periods of high non-target interference, provided the 1080 products are not removed for longer than 2 months in areas where vehicle access is available, or 4 months in remote areas where vehicle access is not available.

PER90618 means the APVMA research permit PER90618, or any permit that the APVMA subsequently issues that supersedes this permit.

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

property means an area of land, including privately owned land, a holding (as defined in the *Local Land Services Act 2013*), a travelling stock reserve, a State Forest, NPWS land, or public place.

public authority has the same meaning as in the *Pesticides Act 1999*.

public place has the same meaning as in the *Protection of the Environment Operations Act 1997*.

public service agency has the same meaning as in the *Government Sector Employment Act 2013*, and also includes a statutory body representing the Crown.

Registered Training Organisation has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

secure packaging means a container (including a plastic bag) that is structurally sound and meets the requirements of regulation 18 of the *Agricultural and Veterinary Chemicals Code Regulations 1995* of the Commonwealth.

State forest has the same meaning as in the *Forestry Act 2012*.

thoroughfare means a road or track maintained for public use for travel or transportation, including through property. It excludes tracks, trails and similar access routes on public land such as NPWS land or State forests, which are not

intended for use by the general public (for example, formed fire trails used for fighting fires).

threatened species means:

- (a) "threatened species" and "threatened ecological community" as defined in the *Biodiversity Conservation Act 2016*; and
- (b) "listed threatened species" and "listed threatened ecological communities" as defined in the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

travelling stock reserve has the same meaning as in the *Local Land Services Act 2013*.

unused in relation to 1080 product, means a 1080 product that has been safely stored and has at no time been placed in the environment for any period to control vertebrate pests.

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

vertebrate pest means the target pest species:

- (a) listed on an approved label for a registered 1080 product or 1080 liquid concentrate product; or
- (b) identified in an APVMA permit that allows the use of a 1080 product or 1080 liquid concentrate product.

Vertebrate Pest Management course means the Vertebrate Pest Management course delivered by NSW DPI, or a Registered Training Organisation; and includes the Vertebrate Pest Management course delivered by NSW Agriculture or NSW DPI prior to the establishment of nationally recognised competencies.

Vertebrate Pesticide Accreditation course means the Vertebrate Pesticide Accreditation course delivered by DPI or LLS, or by NPWS staff who have been endorsed by the NSW Vertebrate Pesticide Training Committee.

Vertebrate Pesticide Induction Training course means the Vertebrate Pesticides Induction Training course delivered by LLS for end users of vertebrate pesticides.

VET statement of attainment has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

VPM means the NSW DPI Vertebrate Pesticide Manual published at <http://www.dpi.nsw.gov.au/> as updated from time to time.

8. Persons authorised

- (1) An Authorised Control Officer is authorised to use or possess 1080 products or 1080 liquid concentrate products, subject to clause 9(1) this Order.
- (2) Any person, other than an Authorised Control Officer or EPA authorised officer, is authorised to use or possess 1080 products, subject to clause 9(1) this Order, who:
 - (a) has obtained the 1080 products from an Authorised Control Officer, or from their nominated person;
 - (b) is either:
 - (i) a person who is qualified within the meaning of clause 31(1)(a), (b), or (c) of the Pesticides Regulation 2017; or
 - (ii) a person who holds a qualification under clause 31(1)(d) of the Pesticides Regulation 2017, which for the purposes of this Order is the Vertebrate Pesticide Induction Training course; and
 - (c) is either:
 - (i) a person that is contracted or employed by the NPWS, the Wild Dog Destruction Board, NSW DPI or the LLS to use 1080 products; or
 - (ii) a landholder of the land on which 1080 products are to be used; or
 - (iii) an authorised agent of the landholder of the land on which 1080 products are to be used.
- (3) An EPA authorised officer is authorised to use or possess 1080 products or 1080 liquid concentrate products, subject to clause 9(2) of this Order.
- (4) A nominated person is authorised to possess 1080 products obtained from an Authorised Control Officer, subject to clause 9(3) of this Order.

9. Conditions on the possession and use of 1080 products and 1080 liquid concentrate products

- (1) A person authorised to use or possess 1080 products or 1080 liquid concentrate products under clause 8(1) or 8(2) of this Order must only use or possess 1080 products or 1080 liquid concentrate products in accordance with:
 - (a) the conditions stated in the Schedule to this Order; and
 - (b) the requirements for use of 1080 under APVMA permit PER90618.
- (2) A person authorised to use or possess 1080 products or 1080 liquid concentrate products under clause 8(3) of this Order must only use or possess 1080 products or 1080 liquid concentrate products for the purposes of storing or possessing a sample of the 1080 products or 1080 liquid concentrate products collected in the exercise of powers under section 198 of the *Protection of the Environment Operations Act 1997*.
- (3) A person authorised to possess 1080 products under clause 8(4) of this Order must only possess 1080 products in accordance with the conditions stated in the Schedule to this Order.

Notes

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

A person must not contravene this Order – maximum penalty \$120 000 for a corporation or \$60 000 for an individual.

This Order will remain in force until it is revoked.

All persons using 1080 products or 1080 liquid concentrate products must follow the instructions in the relevant Schedule to this Order, in order to comply with section 39 of the *Pesticides Act 1999*. Where a Schedule to this Order gives no instruction on information that is required under the Agvet Code to be placed on the label of a 1080 product or 1080 liquid concentrate product, then the instructions on PER90618 must be complied with. Where the Schedule to this Order and PER90618 give no instruction on information that is required under the Agvet Code to be placed on the label of a 1080 product, then the instructions on the label must be complied with. Where any instructions on the approved label or PER90618 are inconsistent with instructions in the relevant Schedule to this Order, the conditions in the Schedule to this Order prevail to the extent of the inconsistency.

In regard to clause 8(2)(b)(i) of this Order, clause 31 of the Pesticides Regulation 2017 provides a definition of “recognised qualification”. For the purposes of that definition, the EPA approves units of competency under Schedule 2 of the Pesticides Regulation 2017. Approvals of units of competencies are published in the NSW Government Gazette. Links to the approvals published in the Gazette are found on the EPA website.

Karen Marler

Director - Environmental Solutions Chemicals, Land, Radiation

Environment Protection Authority

(as delegate of the EPA)

Schedule 1

1. APPROVAL AND AUTHORISATIONS OF 1080 PRODUCTS AND 1080 LIQUID CONCENTRATE PRODUCTS FOR AUTHORISED CONTROL OFFICERS

A person authorised to use or possess 1080 products or 1080 liquid concentrate products under clause 8(1) of this Order must do so in accordance with the following conditions:

- 1.1. An Authorised Control Officer must not allow a person to take possession of 1080 products or 1080 liquid concentrate products unless that person is authorised to possess 1080 products or 1080 liquid concentrate products under clause 8 of this Order.
- 1.2. An Authorised Control Officer must not allow a nominated person to take possession of 1080 products unless the Authorised Control Officer has received evidence of the authorisation given to the nominated person by the landholder, for each property on which the 1080 products are intended to be used.
- 1.3. An Authorised Control Officer must not allow an authorised agent to take possession of 1080 products unless the authorised agent has provided evidence of the authorisation, given by the landholder, for each property on which the 1080 products are intended to be used unless the use of 1080 products on that property:
 - (a) has been determined necessary under the *Local Land Services Act 2013* or the *Biosecurity Act 2015*; and
 - (b) is carried out by an employee or contractor of the LLS or another public authority.
- 1.4. Before allowing a person to take possession of 1080 products, an Authorised Control Officer must conduct a risk assessment to determine if it is appropriate for that person to possess 1080 products, and for the end user to use the 1080 products at the intended location. The risk assessment must be conducted in accordance with the policy and procedures of the VPM, and the NPWS guidelines for all 1080 programs coordinated by a NPWS Authorised Control Officer, or the LLS guidelines for 1080 programs coordinated by any other Authorised Control Officer. If the Authorised Control Officer determines from the risk assessment that it is not appropriate to allow a person to take possession of 1080 products, then the Authorised Control Officer must not allow that person to take possession of any 1080 products from the Authorised Control Officer.
- 1.5. An Authorised Control Officer must ensure that a copy of the risk assessment (see condition 1.4 of this Schedule) is provided to the end user for each property or NPWS BPMS program on which 1080 products are intended to be used.
- 1.6. An Authorised Control Officer must ensure that a copy of this Pesticide Control Order is provided to the end user for each property or NPWS BPMS program on which 1080 products are intended to be used.
- 1.7. An Authorised Control Officer must ensure that a copy of PER90618 is provided to the end user for each property or NPWS BPMS program on which 1080 products are intended to be used.
- 1.8. An Authorised Control Officer must only allow a person to take possession of 1080 products or 1080 liquid concentrate products that are in secure packaging and have an approved label affixed.

2. APPROVAL AND AUTHORISATIONS FOR END-USERS OF 1080 PRODUCTS

A person authorised to use 1080 products under clause 8(2) of this Order must do so in accordance with the following conditions:

- 2.1. A person must not apply 1080 products on a property without the written consent of the property's landholder unless the use of 1080 products on that property:
 - (a) has been determined to be necessary under the *Local Land Services Act 2013* or the *Biosecurity Act 2015*; and
 - (b) is carried out by an employee or contractor of the LLS or another public authority.
- 2.2. A person must not undertake aerial application on NPWS land unless written approval has been obtained from the relevant NPWS Director who has responsibility for 1080 programs run by NPWS or their equivalent.

For application on all other land, a person must not undertake aerial application unless written approval has been obtained from the LLS Chief Executive or their delegate.

- 2.3. A landholder authorising a person to take possession of 1080 products on their behalf as their nominated person must provide evidence prior to their nominated person taking possession of the 1080 products to the Authorised Control Officer of that authorisation for each property on which the 1080 products are intended to be used.
- 2.4. A person taking possession of 1080 products and applying 1080 products on behalf of a landholder as their authorised agent must provide evidence prior to taking possession of the 1080 products to the Authorised Control Officer of that authorisation given by the landholder on whose property the 1080 products will be used. The authorisation must clearly set out the dates or date range to which it applies.

3. POSSESSION OF 1080 PRODUCTS

A person authorised to possess 1080 products under clause 8(1), 8(2) or 8(4) of this Order must do so in accordance with the following conditions:

- 3.1. A person must only take possession of 1080 products that are in secure packaging and have an approved label affixed.
- 3.2. A person transporting or storing 1080 products must ensure that the 1080 products cannot be accessed by any persons who are not authorised to possess or use 1080 products under clause 8 of this Order.

4. USE OF 1080 PRODUCTS

A person authorised to use or possess 1080 products under clause 8(2) of this Order must do so in accordance with the following conditions:

- 4.1. A person using 1080 products must ensure that the 1080 products are used in accordance with any risk mitigating measures identified in the risk assessment (see condition 1.4 of this Schedule).
- 4.2. A person using 1080 products must ensure that all application sites of ground applied 1080 products, or all flight paths for all areas where 1080 products are applied aerially, are marked, recorded, or are otherwise identifiable to a person authorised to use 1080 products under clause 8 of this Order.
- 4.3. Aerial application of 1080 products on NPWS land must be conducted in accordance with NPWS approved guidelines and procedures for aerial application. For application on all other land, aerial application must be conducted in accordance with the LLS approved guidelines and procedures for aerial application.

5. DISPOSAL

A person authorised to use 1080 products under clause 8(2) of this Order must do so in accordance with the following conditions:

- 5.1. A person undertaking ground application of 1080 products must ensure that all untaken 1080 products are collected and removed from each application site at the end of the 1080 program.
- 5.2. A person must dispose of 1080 products as soon as practicable and within two months of completion of the 1080 program.
- 5.3. A person must ensure that all collected or unused 1080 products are disposed of:
 - (a) in a waste management facility that can lawfully accept the 1080 products; or
 - (b) by burial in accordance with condition 5.4, in a disposal pit located at a site identified and approved by an Authorised Control Officer in the risk assessment (see condition 1.4); or
 - (c) in the case of unused 1080 products, by returning unused 1080 products to an Authorised Control Officer.
- 5.4. A person must ensure that all 1080 products disposed of in accordance with condition 5.3(b) are buried under a minimum of 500 mm of soil. The disposal pit must be clear of permanent waterways, and ephemeral waterways, and must not cause pollution of waters under section 120 of the *Protection of the Environment*

6. DISTANCE RESTRICTIONS

A person authorised to use 1080 products under clause 8(2) of this Order must only undertake a 1080 program in accordance with the following conditions:

6.1. A person may apply 1080 products within 5 metres of a property boundary where:

- (a) the 1080 products are being applied as part of a coordinated 1080 program;
- (b) the relevant part of the property boundary is only shared between properties that are part of the coordinated 1080 program;
- (c) an Authorised Control Officer has undertaken a risk assessment (see condition 1.4 of this Schedule) and has determined that 1080 products can be applied at distances of less than 5 metres from the property boundary; and
- (d) an Authorised Control Officer has obtained written consent from all landholders involved in the coordinated 1080 program to use or to allow the use of 1080 products at distances of less than 5 metres from the property boundary on the landholder's property.

7. PUBLIC NOTIFICATION

A person authorised to use 1080 products under clause 8(2) of this Order must ensure that certain persons are notified of the use of 1080 products in accordance with the following conditions:

7.1. A person must not use any 1080 products on any land unless a minimum of 72 hours' notice has been given before the date on which they intend to use the 1080 products ("the notification"), subject to condition 7.6 of this Schedule.

7.2. The notification required in condition 7.1 of this Schedule must be given to the landholder of every property that has a property boundary within one kilometre of any boundary of the location where the 1080 products are to be used.

7.3. The notification in condition 7.1 of this Schedule must contain:

- (a) the type of pest being controlled with the 1080 products;
- (b) the property on which the 1080 products will be used;
- (c) dates on which the 1080 products will be used or the range of dates during which 1080 products will be used;
- (d) contact details of the person who will use the 1080 products or their office, or, in the case of a public authority, contact details of the person who can be contacted for more information about the 1080 products being used on the property or of their office; and
- (e) a warning that pets and domestic animals may be affected and recommended actions to be taken.

7.4. The notification required in condition 7.1 of this Schedule may be given by telephone, text message, email, in person or by mail (including letter box drop). Where the notification cannot be made by those methods, or the number of persons to be notified is more than 25, or, for coordinated programs, where the number of participants is more than 25:

- (a) the notification may be made by advertisement in a local newspaper; or
- (b) where use of 1080 products is to be done under a NPWS RMPS program or equivalent Forestry Corporation of New South Wales program, the notification may be made by advertisement on a government website.

7.5. For ongoing 1080 programs, the notification must be given at least every 6 months.

7.6. A person who can provide evidence that livestock are being attacked or under imminent threat of attack, or that a listed threatened species is being attacked or under imminent threat of attack, may seek approval from an Authorised Control Officer to apply 1080 products without complying with condition 7.1 of this Schedule.

8. SIGNAGE

A person authorised to use 1080 products under clause 8(2) of this Order must ensure that notices (“1080 Poison Notices”) are erected in accordance with the following conditions:

- 8.1. A person must not use 1080 products on a property unless they have erected 1080 Poison Notices at that property. These notices must remain erect, intact, legible and clearly visible for the duration of the 1080 program.
- 8.2. A person must place 1080 Poison Notices at:
 - (a) all vehicle entry points to the location, commonly used entry points to the location and every formed entry point to the location;
 - (b) the main entrances to the location where 1080 products are being used; and
 - (c) every five kilometres along all thoroughfares which border or pass through the location.
- 8.3. 1080 Poison Notices must specify:
 - (a) the type of pest being controlled with 1080 products;
 - (b) that 1080 products are being used on the property;
 - (c) the dates on which 1080 products will be used or the range of dates during which 1080 products will be used;
 - (d) contact details of the person who will use the 1080 products or of their office, or, in the case of a public authority, contact details of the person who can be contacted for more information about 1080 products being used on the property or their office; and
 - (e) a warning that the health of domestic animals may be affected by exposure to 1080 products.

Notes

Under Part 5 of the Pesticides Regulation 2017, public authorities have additional public notification obligations that must be complied with.

A person may obtain 1080 Poison Notices from an Authorised Control Officer.