

Health and Safety Commission Paper			HSC/06/67
Meeting Date:	5 September 2006	Open Gov. Status:	Fully Open
Type of Paper:	Below the Line	Paper File Ref:	
Exemptions:	None		

HEALTH AND SAFETY COMMISSION

Amendment to the Code of Practice for Using Plant Protection Products

A Paper by: Joan Reeves, Pesticides Safety Directorate and Garry Wiles DR3
Flammable Chemicals and Biocides Unit

Name of Board Member lead: Giles Denham

Cleared by DCE / Board Member: Jonathan Rees on 11 August 2006

Issue

1. Publication of an amendment to paragraph 3.7.4 of the Code of Practice for using Plant Protection Products, shown at **Annex A**.

Timing

2. HSE and Defra are keen that the amended paragraph is published as early as possible, but particularly before the end of January 2007. The paragraph about rights of way in the current Code of Practice is incorrect and misleading. As some of the Code is approved under HSWA, including this paragraph, the Commission's formal approval is required before the final text can be published

Recommendation

3. That the Commission write to Lord Hunt with proposals to approve the draft amended paragraph to the Code. The secretary to the Commission will sign a new Notice of Approval for the front section of the Code, so that the revised paragraph can then be approved by Defra Ministers and published.

Background

4. The Commission agreed at the 8 March 2005 meeting (HSC/05/41) to approve the relevant parts of the whole Code. The revised Code was issued in February 2006 with the relevant sections approved under FEPA/HSWA and also the Groundwater Regulations 1998. It is an amalgamation of 2 statutory codes and one voluntary code:
 - the Code of Practice for the Safe Use of Pesticides on Farms and Small Holdings ("the Green Code"), first published in 1990;

- the Code of Practice for the use of Approved Pesticides in Amenity Areas and Industrial Areas ("the Orange Code") a voluntary code produced by the National Association of Agricultural Contractors and the British Agrochemical Association;
- those parts of the Code of Practice for the safe use of Pesticides for Non-Agricultural Purposes - The Control of Substances Hazardous to Health Regulations 1999 ("the Blue Code") that deal with forestry.

Argument

5. This amendment is being made to correct an error in the Code in a paragraph dealing with the Countryside and Rights of Way Act 2000 (CRoW). The Code is technically incorrect because it refers to other legislation that is not yet in place. Section 135A of the Highways Act 1980, the section amended by CRoW, will allow for a temporary diversion of a public right of way by the occupier or owner of the land. This amendment to the Highways Act is not yet implemented or in force. The 'works of prescribed descriptions likely to cause danger to users' was consulted on by Defra in 2005 but no decision has been reached as to what such works would include. As this Section is not yet in force Defra have decided to remove all references to it, amend the paragraph accordingly and tell people to look out for further changes to the law in the future.
6. This came to Defra's attention when Friends of the Earth (FoE) in conjunction with Pesticides Action Network UK (PAN UK) gave notice that they would apply for a judicial review unless steps were taken to rectify the matter. They have agreed to suspend their action if Defra amended the wording of the code of practice in paragraph 3.7.4. The Pesticides Safety Directorate, an executive agency of Defra dealing with pesticide approval and guidance, immediately undertook to re-draft the paragraph, with advice from their legal team and in liaison with sections of Defra who deal directly with public access and public rights of way policy and guidance.
7. Defra officials will seek ministerial approval by Lord Rooker, Minister for sustainable farming, once the Commission has signalled its approval.
8. The text will then be approved by the Welsh Assembly Government and put before both Houses of Parliament.

Consultation

9. The draft has been seen for comment by a range of individuals, government departments, the devolved administrations and other stakeholders. A list of those consulted is attached at **Annex B**.
10. As this was an amendment to a paragraph in the Code, the consultation included all of those who commented on the original paragraph in the consultation on the Code of Practice between 5 May and 30 July 2004.

Presentation

11. The Code of Practice is written for professional users of pesticides and is well established in that community. This amendment simply updates one paragraph of the current edition.
12. The amendment is unlikely to generate a great deal of interest other than comment from FoE and PAN UK when the new paragraph is published.

Costs and Benefits

13. The amended paragraph introduces no new controls and so there are no associated costs. Users will benefit from having a paragraph about rights of way and public access that is accurate and up to date.

Financial/Resource Implications for HSE

14. The Code is published by Defra. No additional costs will be incurred by HSE.

Other Implications

15. Devolution
 - Scottish Executive Environment and Rural Affairs Department will soon issue their own version of the Code of Practice. They are aware of the issue with this paragraph in the England/Wales version of the code. The same error does not appear in their Code of Practice
 - The Welsh Assembly for Government (WAG) Agriculture Department has been involved in the drafting of this paragraph and its consultation. The WAG logo appears on the cover of the Code and WAG is identified as a source of information within the revised paragraph
 - The Department of Agriculture in Northern Ireland are considering issuing their own code under their own legislation in the future. They are aware of the issues involved with the amendment to this paragraph.

Action / Next Steps

16.
 - a) HSC Chair to write to the Minister seeking consent to approve the new paragraph to the Code of Practice. A draft letter is attached at Annex C;
 - b) Once Lord Hunt has signalled consent, PSD and Defra will take the necessary steps to publish it. The published Code contains a Notice of Approval signed on behalf of the Commission by the HSC Secretary. This will be updated accordingly.

PROPOSED NEW PARAGRAPH 3.7.4 OF THE CODE OF PRACTICE FOR USING PLANT PROTECTION PRODUCTS

3.7.4 Public access

People may have a right by law or with the landowner's permission (called 'permissive access') to go into areas to be treated with pesticides such as:

- public rights of way (footpaths, bridleways, byways etc);
- areas with a statutory right of public access under the Countryside and Rights of Way Act 2000 (CRoW). This might be, for instance, mountain, moor, heath and down, registered common land or Forestry Commission woodland;
- other public places, such as public parks (county or urban), parkland, farmland and woods open to the public, where people can roam freely;
- where the landowner gives permission, such as permissive paths and routes, and areas covered by access agreements e.g. agri-environment schemes; or
- footways and verges alongside roads.

You must make sure you understand when applying pesticides

- if people have a right of access to this land or land next to it; and
- under what law, provision or agreement they are given this right.

It might make a difference to what you are allowed to do. For instance, you must keep public rights of way open but under 'permissive access' you may be able to close the area to the public as long as the terms of the 'permission' lets you do so.

If you want to know about public access or public rights of way, get in touch with the Defra Helpline by phone on 08459 33 55 77 or email helpline@defra.gsi.gov.uk for England or the Welsh Assembly Government by phone on 029 2082 3048 or email countrysideaccess@wales.gsi.gov.uk.

When applying pesticides:

- in areas where the public are allowed to go, you must make sure that people are not put at risk;
- to crops or other areas to be treated, you must not let your pesticide drift onto areas or routes where the public have access, whether people are using them at the time or not.

To make sure people are not put at risk you should:

- Find out the public access provision on or near to areas you are treating.

- If people are using the land or right of way while you are applying pesticides you should stop for a while if there is a risk to health, for instance from the machinery you are using or from spray.
- If a public right of way or other public access crosses or runs alongside a field or other area you are going to treat, you must not put anyone at risk as you apply the pesticide. Consider using notices to tell people that pesticides are being applied and telling them to keep themselves, children and pets out of the sprayed area. You may want to tell them what the pesticide is and what it does without using technical jargon they may not understand. You can put such notices on the grounds, but everyone must be able to see them from where they are allowed to go.
- When you are applying pesticides in areas where people are allowed to go over a wide area, such as moorland or forests, you should put up suitable warning notices at the main access points to the area. These access points may be where the public leave the tarred road or car park and should be a considerable distance from the application site. In the notices you may want to suggest an alternative route.
- Take account of any remaining risks, such as to children and pets straying into freshly treated areas. Some pesticide labels tell you to keep unprotected people and livestock out of the treated area for a specific period. Do not use these pesticides if you cannot restrict access to the site until the area is safe.
- Always remember to take warning notices down when they are no longer needed.

If you decide that you need to apply a pesticide directly onto an area with public access or a public right of way (for example, for weed control on a pavement, or bracken spraying on a moorland) you should strictly follow the pesticide's instructions or the detailed advice of a properly trained adviser (BASIS qualified, for instance) to avoid putting people at risk. You should make sure you understand any detailed conditions about public access.

Remember that landowners and occupiers do not have the right to close or divert a public right of way to apply pesticides.

If you use a pesticide on a public right of way, you must make sure:

- that you do not use one that needs you to keep people or animals away from the area for **any** period of time;
- The conditions of approval for certain pesticides may contain detailed instructions for public rights of way. You must follow these conditions.
- it does not put people using the right of way at risk. Remember that people or animals may be at risk until the spray has dried. Make sure you avoid such risks.
- If you think you should put a notice on the public right of way itself, you should agree what it says with the highway authority (usually the local authority such as county or unitary authority) as it is an offence to put up a notice which suggests that people cannot use the public right of way.
- In the future when section 135A of the Highways Act 1980 (made possible by CRoW) comes into force, you may be allowed to close or divert public rights of way

for some 'dangerous works'. No decisions have been taken yet. Defra and the Welsh Assembly Government can tell you about the law in this area. Their contact details are above.

If you need to use a pesticide on areas where people have access but it is not a public right of way, you should make sure you know what the terms of the public access are and whether you can control people's access to the area or route.

- If the access arrangement does not allow you to divert or stop people using the area being treated, then you should follow the points in this paragraph for public rights of way.
- If you can close an area or route for a while then you can consider this when you do your risk assessment to lessen the risk to people.

You will need to take particular care when applying pesticides to any land which has CRoW rights of public access (for instance, open country where people can walk without having to keep to footpaths or other rights of way). You may need to stop working when people are using the land near you.

To find out more please contact the open access contact centre on 0845 100 3298 in England or the Countryside Council for Wales on 08451 306 229 in Wales. You should contact the relevant National Park if your land is in a National Park area.

You should follow the guidance given in this section about the safety of people and animals when you treat public rights of way with pesticides, including to control weeds in amenity areas. You should talk to and, if necessary, get the permission of the local authority (such as county or unitary authority) or owner of the land crossed by the public right of way before you carry out any pesticide work. You may need to think about how safe and legal it is to apply a pesticide with equipment mounted on or pulled by a vehicle on a public right of way.

Recipients list

Name	Organisation
Dr Charles Clutterbuck	
John Skinner	
Mr D Russell	Agricultural Engineers Association
Ms Hazel Doohan	Agricultural Industries Confederation
Dr Paul Beckwith	British Waterways
Mr P Goldsworthy	Crop Protection Association Ltd
Colin Palmer	Forestry and Timber Association
Mr J Dewar	Forestry Commission
Mr Phil Michaels	Friends of the Earth
Mr R Hirst	Institute of Horticulture
Colin Palmer	International Mountain Bike Association
Tom Bals	Micron Sprayers Limited
Ms J Hewitt	National Association of Agricultural Contractors
Mr N Kift	National Farmers Union
Ms A Craig	Pesticide Action Network UK
Mrs J Davis	Ramblers Association
The Secretary	Ramblers Association
The Secretary	Rights of Way Review Committee
Tony Woodley	TGWU (Agriculture Section)
Georgina Downs	UK Pesticides Campaign

ADDITIONS TO THE ORIGINAL LIST (requests)	
Peter Melchett	Soil Association
Michael Green	Soil Association
Mrs Elsie Mansbridge	33 Chester Road, Chigwell, Essex, IG7 6AH
Institute of Public Rights of Way Officers	

DRAFT LETTER TO THE PARLIAMENTARY UNDER SECRETARY (LORDS)

Lord Hunt
Parliamentary Under Secretary (Lords)
Department for Work and Pensions
Richmond House
79 Whitehall
London
SW1A 2NS

September 2006

APPROVING THE AMENDED PARAGRAPH 3.7.4 OF THE CODE OF PRACTICE FOR USING PLANT PROTECTION PRODUCTS

I am writing to seek your consent for the Health and Safety Commission (HSC) to approve an amended version of paragraph 3.7.4 of the Code of Practice for using Plant Protection Products. The amended paragraph will be adopted by virtue of section 16(1) of the Health and Safety at Work etc. Act 1974 (HSWA).

On 30 June 2005, you consented to the HSC's approval of the relevant parts of the Code of Practice within which the amended paragraph will be placed, and Defra published it in January 2006. This amendment is necessary in order to correct an error in the paragraph dealing with the Countryside and Rights of Way Act 2000 (CRoW), ie the reference to other legislation, section 135A of the Highways Act 1980, that is not yet in place. The Pesticides Safety Directorate, an executive agency of Defra dealing with pesticide approval and guidance, has undertaken to re-draft the paragraph in the light of a notice by Friends of the Earth, in conjunction with Pesticides Action Network UK, to apply for a judicial review unless steps were taken to rectify the matter.

As this particular paragraph is approved under HSWA, the Commission's formal approval is required before the final text can be published.

BILL CALLAGHAN

Chair, Health and Safety Commission