

REPORT

File: CL013

Report No.: 2004/334

Prepared for: Policy Committee

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Date: 1 June, 2004

**Subject: Hazardous Substances and New Organisms Act 1996 – Comments on
Proposed Amendments**

1. Précis

The Ministry for the Environment (MfE) has commenced consultation on proposals to amend the Hazardous Substances and New Organisms (HSNO) Act 1996. This report places draft comments before the Policy Committee for consideration. The comments are due on Friday 11 June 2004.

2. Background

The hazardous substances provisions of the HSNO Act have been operating since July 2001. It has become evident that there are a number of problems with the Act affecting its workability. A working group was set up to form an action plan to remedy the problems. The outcome was a Hazardous Substance Strategy, which contained a number of short-term and long-term actions to address the issues. Proposed short-term legislative actions have now been completed and MfE is now consulting on proposals to address the long-term actions.

The proposals, set out in two volumes, were distributed to key Council staff for analysis and comment. Any comments the ORC provides to MfE will be incorporated into proposals that will be put to ministers. The resultant bill will probably be introduced into Parliament before the end of 2004.

3. Key changes proposed

Overall, the long-term actions addressed in the proposals aim to:

- Develop efficient application pathways and generic approvals for new and transferred substances, removing any redundancies in the present application pathways;
- Develop tools to make controls easier to understand, including the use of conditions and standard sets of controls;
- Change the HSNO Act to clarify the role of the Environmental Risk Management Authority (ERMA), territorial authorities and regional councils in hazardous substances enforcement; and
- Close gaps and correct overlaps with other pieces of legislation, including the Resource Management Act 1991 (RMA).

More specifically, it is proposed that:

1. New pathways are created to enable ERMA to set up groups of substances and apply a single set of controls to all substances in that group;
2. The current role of territorial local authorities (TLAs) in compliance monitoring and enforcement is clarified;
3. Regional councils:
 - Are given responsibility for hazardous substance enforcement where hazardous substances are discharged into the environment;

- Are given the option to enforce the HSNO Act while inspecting premises under the RMA if they wish; and
 - Be responsible for hazardous substance enforcement where the function has been transferred by another enforcement agency.
4. Emergency response planning is formalised - the ORC is involved in the Hazardous Substances Technical Liaison Committee (HSTLC) for the Otago region, which provides advice on dealing with hazardous substance emergencies;
 5. The workability of environmental exposure limits (EELs) and tolerable exposure limits (TELs) is improved;
 6. It is made easier to move specialty substances between research institutions;
 7. Substances imported to New Zealand solely for re-export are allowed to be covered by the existing containment approvals mechanism in the HSNO Act;
 8. Compliance, monitoring and enforcement is improved by:
 - Requiring HSNO approval numbers on labels;
 - Providing for a register of test certifiers;
 - Giving ERMA the power to revoke an approved handler test certificate;
 - Ensuring that if an unapproved substance is imported, it must be re-exported;
 - Providing for enforcement agencies, when doing HSNO work, to use powers of entry and inspection that they have under other legislation; and
 - Taking a fresh look at HSNO systems to report hazardous substance-related injuries.
 9. Data protection provisions for agrichemicals are reviewed; and
 10. New pathways are provided to:
 - Enable rapid approval for substances needed in an environmental emergency; and
 - Enable rapid assessment to reassess a substance if the original approval was given via the non-publicly notified rapid assessment pathway.

Of the above proposals 3, 4 and 5 are of direct interest to regional councils as they are important for effective implementation of the HSNO Act especially in relation to control of toxic and eco-toxic substance discharges to the environment.

4. Draft Otago Regional Council Comments

Draft comments on those proposals of direct interest to regional councils were compiled from staff feedback received and are attached to this report. The comments are framed around questions posed by MfE for each proposal in the consultation documents. In summary, the following comments have been made:

- The ORC **supports** the proposal to have an explicit enforcement role for regional councils under the HSNO Act provided it is in the context of the RMA (i.e. enforcement of discharges to the environment);
- The ORC **supports** formalisation of emergency response planning under the HSNO Act;
- The ORC **supports** the development of codes of practices for the use of toxic and eco-toxic substances; and
- The ORC **opposes** the separation of the EEL/TEL setting process if it means that substances will be approved for use before an exposure limit is set.

5. Recommendation

That the Committee approves the attached comments, including any amendments the Committee makes and that it is sent to MfE.

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Comments from the Otago Regional Council on the Proposals to Amend the Hazardous Substances and New Organisms Act 1996

28 May 2004

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2. Introduction

In general, the Otago Regional Council (ORC):

- **Supports** the proposal to have an enforcement role for regional councils under the Hazardous Substances and New Organisms (HSNO) Act provided it is in the context of the Resource Management Act 1991 (RMA) (i.e. enforcement of discharges to the environment);
- **Supports** some level of formalisation of emergency response planning under the HSNO Act; and
- **Supports** the proposals to improve the workability of tolerable and environmental exposure limits.

Further comments on the general statements above are provided below. The comments are framed around specified questions, set out in Volume 1 and 2 of the Hazardous Substance Strategy.

3. Specific comments

3.1. Volume 1, Section 4: Compliance and Enforcement

3.1.1. Question 17: *Should regional councils be responsible for enforcing hazardous substances enforcement under the HSNO Act where hazardous substances are discharged into the environment?*

The ORC **supports** the proposal to have an enforcement role for regional councils under the Hazardous Substances and New Organisms (HSNO) Act. Regional councils already enforce discharges of hazardous substances to the environment under the Resource Management Act (RMA). The ORC **supports** a reporting process whereby regional councils provide information on hazardous substance incidents they have attended to the Environmental Risk Management Authority (ERMA).

3.1.2. Question 18: *Should regional councils have an explicit role under the HSNO Act that enables them to carry out HSNO enforcement while enforcing the provisions of the Resource Management Act?*

The ORC **supports** giving regional councils an explicit role under the HSNO Act that enables them to carry out HSNO enforcement provided it is only in the context of hazardous substances discharges to the environment. The ORC **opposes** undertaking any other agencies roles without delegation. The ORC **may support** any reporting of obvious non-compliance under the HSNO Act to relevant agencies.

Clarification is required in relation to legal action. There will be instances where enforcement of discharges to the environment will be the responsibility of more than one agency. Since multiple agencies are involved in enforcing the HSNO Act, clarification is required as to which one of the agencies will be the lead agency in enforcing discharges to the environment.

3.1.3. Question 19: What are the resource implications for councils if they do?

Staff may need some training in the HSNO Act to understand respective roles and powers of different agencies.

3.1.4. Question 20: Is there value in formalising hazardous substances technical liaison committees under the HSNO Act (with or without formal links to the co-ordinating executive group and Civil Defence and Emergency Management Act)?

The ORC **supports** the Hazardous Substances Technical Liaison Committees (HSTLCs) becoming a subcommittee of the coordinating executive group.

3.2. Volume 2, Section 2: Environmental and Tolerable Exposure Limits

3.2.1. Question 1: To improve the workability of tolerable and environmental exposure limits, we propose to:

- *Set EELs and TELs but require people to develop and meet a code of practice that demonstrates that the EEL or TEL should be met;*
- *Separate the EEL- and TEL-setting process from the approval process;*
- *Allow regional councils to set environmental limits for discharge permits higher than an ERMA-prescribed EEL, if they have carried out an appropriate risk assessment.*

Are there any alternatives we have missed? Can you see any problems with the preferred proposals?

The ORC **generally supports** the proposals to improve the workability of tolerable exposure limits (TELs) and environmental exposure limits (EELs).

The ORC **supports** the proposal to allow regional councils to set less conservative exposure limits on a site-specific basis for resource consents.

The ORC **supports** the development of codes of practices that demonstrate that EELs and TELs should be met.

The ORC **opposes** the separation of the exposure limits-setting process from the approval process if it means that a hazardous substance could be used without setting an EEL/TEL. If approval occurred before exposure limit setting then regional councils may take ad-hoc approaches to setting their own limits. It needs to be explicitly stated that EELs/TELs will be set for a new substance before it is approved. When approving new substances ERMA must also consider any cumulative adverse effects of any substances that are likely to be released into the environment.