

RESOURCE MANAGEMENT (EXEMPTION) REGULATIONS 2017 – GUIDANCE

Pest control regulations

This is a guidance document to assist with implementation of the Resource Management (Exemption) Regulations 2017 by regional councils and pest control operators.

Overview

These regulations are made under section 360(1)(h) of the Resource Management Act 1991 (RMA), which enables regulations that exempt contaminants from the requirements of s15 of the RMA.

Section 15 provides that no person may discharge a contaminant into the environment unless the discharge is expressly allowed by:

- a national environmental standard or other regulations;
- a rule in a regional plan; or
- a resource consent

The regulations provide that three vertebrate toxic agents (VTAs) – sodium fluoroacetate (1080), brodifacoum, and rotenone – plus any associated pre-feed or repellent are exempt from s15.

For a discharge to be exempt from s15, it must comply with certain limits, and the operator responsible for the discharge must provide certain information to regional councils.

The regulations take full effect on 1 April 2017. Their provisions do not rely on plan changes or consent reviews to have legal effect.

Regional council functions

Once the regulations are in force, regional councils no longer:

1. issue resource consents for discharges that comply with the regulations
2. make rules for discharges that comply with the regulations.

Under the regulations, *Schedule 2* requires operators to give regional councils written notice of any discharge under the regulations, providing information about the VTA, the location of the discharge, and the contact details of the operator. This information is for two central purposes:

- councils will be able to respond to any public enquiries about operations
- councils will have sufficient information to monitor and enforce the regulations in accordance with their ordinary discretion.

Plan provisions

The regulations prevail over any existing regional rules that are inconsistent with the regulations.

Regional plan provisions still apply to discharges that are not covered by the regulations, as these discharges are still subject to s15 of the RMA.

To ensure regional plans clearly describe their respective regulatory regimes for pest control and to avoid confusion, regional councils should consider amending their plans to reflect the changes made by the regulations.

Councils may wish to consider whether such a plan change is of minor effect as per Schedule 1 clause 16(2) of the RMA, and if in doubt, seek independent advice.

Monitoring and enforcement

We expect regional councils to exercise their ordinary discretion for monitoring and enforcing these regulations. Please note that without resource consents, there is no mechanism for cost recovery under these regulations.

These regulations do not affect the responsibilities of other agencies for monitoring and enforcement of pest control operations under Hazardous Substances and New Organisms Act 1996 and the Agricultural Compounds and Veterinary Medicines Act 1997.

Pest control operators

The regulations effectively make the discharge of the listed VTAs and associated substances a permitted activity, subject to compliance with the conditions. Operators can rely on the regulations and do not require a discharge consent under the RMA.

Conditions on the regulations

As per *Schedule 2*, operators must provide written notice with information about each operation to the relevant regional council. The information is to enable councils to respond to public enquiries about pest control in their region, and to monitor and enforce activities at their discretion.

The information to be provided includes:

- notice of proposed discharge before each operation
- notice of actual discharge after each operation.

The operation must comply with the information provided to the regional council.

Discharges that do not comply with the regulations

Any discharge that does not comply with the regulations is still subject to s15 of the RMA.

Examples of discharges that do not comply with the regulations are:

- a proposed rotenone discharge where the target water body's surface is larger than one hectare, or is connected to another river or artificial watercourse, at the time of proposed discharge
- a proposed brodifacoum discharge on the South Island in an area not protected by a predator-proof fence.

A discharge also does not comply with the regulations if it fails to meet the *Schedule 2* requirements to notify regional councils of discharges made under the regulations.

If an operator undertakes a discharge that does not comply with the regulations, it may be in breach of s15 of the RMA depending on relevant plan rules. If in breach, the operator is liable for any council enforcement action for unlawfully discharging a VTA.

Existing consents

Once the regulations are in force, pest control operators will not need to apply for new consents and can carry out operations which comply with the regulations.

Operators with existing consents can apply to surrender their consents by giving written notice to the consent authority (typically the relevant regional council) under s138 of the RMA. Consent authorities may refuse to accept the surrender of consent where it considers that the operator would fail to comply with ongoing consent conditions.

Whether or not there are any such conditions depends on the circumstances and terms of the consent. If operators are unsure, they should seek independent advice.

Find out more

Contact the Ministry for the Environment by emailing pestcontrol@mfe.govt.nz

For more information on the Resource Management (Exemption) Regulations 2017, visit <http://www.mfe.govt.nz/more/biodiversity/streamlining-regulatory-regime-pest-control>

Published in March 2017 by the
Ministry for the Environment
Publication number: ME 1293

New Zealand Government