



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

# **Hazardous Substance Strategy**

## **Proposals to Amend the Hazardous Substances and New Organisms Act 1996**

Volume One

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# Foreword

The Hazardous Substances and New Organisms Act 1996 (HSNO) was an ambitious and innovative law when it was introduced. Its aim was to tackle some long-term systemic problems with the way New Zealand managed the various chemicals and nasty substances that we use every day.

It sought to do this by bringing all substances together under one regime, including the previously neglected ecotoxic substances, and by proposing a national compliance system for all types of substances. In doing so it brought New Zealand into line with the international Globally Harmonised System for the Classification and Labelling of Hazardous Substances.

The Act was based on three key principles:

- acting cautiously where there is scientific uncertainty
- providing for the right of the public to know about the effects of the substances that surround us
- considering the full life-cycle of the substance from manufacture to disposal.

These are all worthy aims, but there was niggling and noise around the way the Act worked in practice, which detracted from its achievements.

In response, we got together a group of knowledgeable people from industry and local government to draft a plan for dealing with these workability issues. The plan developed into the Government's Hazardous Substances Strategy, which was announced by the Minister for the Environment, Hon Marian Hobbs, in June 2003.

Since then the work has been non-stop and all of the short-term actions identified in the strategy are now complete. You can see the effects of this work already. The most obvious is that the Environmental Risk Management Authority was freed up to transfer single-component dangerous goods to HSNO controls on 1 April 2004.

This two-volume discussion paper represents the second phase of work under the Hazardous Substances Strategy and aims to address any remaining workability issues with the Act. We want feedback on the proposals here so we can make sure that the Act complements how the real world works, and that the benefits of the Hazardous Substances and New Organisms Act 1996 can be realised.



Barry Carbon  
Chief Executive



# Contents

Foreword	i
Executive Summary	v
What parts will interest you	vi
<b>1 Introduction</b>	<b>1</b>
1.1 The origins of our hazardous substances law	1
1.2 The Hazardous Substances Strategy	2
1.3 How the strategy led to this discussion paper	3
1.4 Your input is requested	4
<b>2 Streamlining the Hazardous Substance Application Process</b>	<b>5</b>
2.1 Introduction	5
2.2 The transfer of existing hazardous substances to HSNO controls	5
2.3 Inefficiencies in the current new hazardous substance application system	7
2.3.1 The HSNO Act application process is overly complicated and costly for substances used in a low-risk manner	7
2.3.2 Duplication of hazardous substance approvals	8
2.4 Group standard pathway proposal	9
2.4.1 Setting up a group standard	10
2.4.2 How an applicant would use the group standard pathway	10
2.4.3 Examples of group standards	11
2.4.4 Discussion of the proposal	14
2.5 Options for improving the efficiency of the existing application pathways	15
2.5.1 The classification process	15
2.5.2 Pre-application information	16
<b>3 Improving how Controls are Communicated</b>	<b>17</b>
3.1 How the controls work now	17
3.2 Proposal for ERMA to issue standardised sets of controls	18
<b>4 Compliance and Enforcement</b>	<b>19</b>
4.1 Background	19
4.1.1 The Hazardous Substance Strategy – an interim solution in place	19
4.1.2 Compliance monitoring and enforcement of hazardous substance controls	20
4.2 Clarifying the current role of territorial authorities under the HSNO Act	21
4.3 An enforcement role for regional councils under the HSNO Act	22
4.4 Formalising emergency response planning under the HSNO Act	24

5	Regulatory Impact Statement – Data Collection	27
6	Having Your Say	28
6.1	Ministry contact	28
6.2	Closing date	28
6.3	Information for submitters	28
	Glossary	29

# Executive Summary

This paper is the first of two volumes describing proposals to amend the Hazardous Substances and New Organisms Act 1996 (HSNO).

This first volume presents proposals that came out of the development of the government's Hazardous Substances Strategy and will be of interest to a general audience. The second volume largely covers material that was not part of the original strategy, and will be of interest to more specialist, technical audiences. Detailed guidance on which parts of the papers will be of interest to particular audiences is given in a short table below.

The Hazardous Substances Strategy aims to improve the workability of hazardous substances legislation and includes short- and long-term actions. With the short-term actions now complete, people will observe a significant improvement in the operation of hazardous substances legislation, starting with the long-delayed transfer of single-component dangerous goods on 1 April 2004.

This paper elaborates on the proposals identified in the strategy to be implemented in the longer term. After we have received your feedback, it will be incorporated into proposals that we will be put to ministers. The resultant bill will probably be introduced into Parliament before the end of 2004.

We seek your feedback on several proposals to improve HSNO processes, and thereby reduce compliance costs and improve the protection of public health, safety and the environment. Specifically, this paper includes proposals to:

- streamline the hazardous substance application process, particularly for lower-risk substances
- improve how hazardous substance controls are communicated
- improve the compliance and enforcement regime.

The hazardous substance application process is seen as overly complicated, particularly for substances used in a low-risk manner, creating a need for a new pathway to simplify and speed up the application process. We propose the development of a group standard pathway to enable the Environmental Risk Management Authority (ERMA) to set up groups of substances and apply a single set of controls to all the substances in that group, reducing the number of approvals that will be required and streamlining the application pathway.

The purpose of the HSNO Act (protecting the environment and the health and safety of people and communities) is achieved by the application of controls. It is these controls on packaging, labelling and storage, for example, that reduce the likelihood of any adverse event, and, should one occur, reduce the potential damage. Industry has indicated that the controls would be more user friendly if they were organised according to the means by which they may be implemented (eg, all the requirements for labels in one place), rather than the function they perform (eg, identification, containment, managing emergencies). Industry has also indicated that, for smaller businesses, if controls were simplified and more prescriptive rather than being performance based they would be easier to comply with.

We propose to enable ERMA to create standard sets of controls that would still allow better-resourced industry to take advantage of the performance-based nature of the regulations, but that would simplify compliance for those industries that do not have the resources to interpret the control regulations. The proposal would also reduce the number of sets of controls being used, making it easier for enforcement agencies to enforce the HSNO requirements and to help people to comply.

The Hazardous Substances Strategy identified compliance monitoring and enforcement as a high priority. Section 97 of the HSNO lists enforcement agencies together with the places or subject areas each is responsible for. This approach differs from what existed previously and relies on a high level of co-operation between various agencies. There have been teething problems, and the loss of enforcement capacity within territorial authorities has been a particular concern. In response to this situation, the paper proposes that:

- the current role of territorial authorities should be clarified
- regional councils should have an HSNO enforcement role
- there is a need to formalise emergency response planning.

## What parts will interest you

The following chapters may be of particular interest to you or your organisation.

Iwi and non-governmental organisations	Volume 1 and Volume 2, chapters 2, 5, 6 and 7
Importers or manufacturers of hazardous substances	Volume 1 and Volume 2, chapters 4 and 6
Local government councillors and policy makers	Volume 1, chapter 4
Local government hazardous substance enforcement officers	Volume 1, chapter 4; and Volume 2, chapter 2
Local government scientists	Volume 2, chapter 2
Researchers, including Crown research institutes and universities	Volume 2, chapter 3
Test certifiers	Volume 1, chapter 4; and Volume 2, chapter 5
Medical professionals	Volume 2, section 5.6

# 1 Introduction

This discussion paper is the next stage in implementing the Government's Hazardous Substances Strategy. The strategy aims to improve the workability of the hazardous substances side of the Hazardous Substances and New Organisms Act 1996 (HSNO). We seek your feedback on several proposals to improve HSNO processes, and thereby reduce compliance costs and improve protection of public health, safety and the environment.

The discussion paper is in two volumes. This first volume is intended for people with a general interest in the HSNO Act. The second volume is more technical and is intended for a specialist audience, such as people who make applications for approvals or otherwise frequently interact with the Environmental Risk Management Authority (ERMA).

The proposals in this first volume affect only hazardous substances. They do not affect the HSNO Act processes for managing new organisms, including genetically modified organisms.

## 1.1 The origins of our hazardous substances law

The HSNO Act was the end result of reforms in response to public concern internationally and in New Zealand about the management of hazardous substances. Chapter 19 of the Agenda 21 document, published following the United Nations Earth Summit in Rio de Janeiro in 1992, contained international best practice principles for the environmentally sound management of toxic chemicals. The key principles were incorporated into the HSNO Act. They are:

- acting cautiously in instances where there is scientific and technical uncertainty
- providing for the right of the public to know about the effects of substances
- considering the full life-cycle of a substance from manufacture to disposal.

The HSNO Act also embodies the United Nations' Globally Harmonised System for the Classification and Labelling of Hazardous Substances (GHS), which is now being adopted by countries around the world.

The HSNO Act has a clear purpose to protect the environment and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances. It does this in large part by having a single independent authority, ERMA, make decisions on whether or not hazardous substances can be imported, manufactured or used, and assign controls to ensure such substances are used, stored, handled and packaged in such a way as to manage any risks they pose to people, property and the environment.

## 1.2 The Hazardous Substances Strategy

The hazardous substances provisions of the HSNO Act have been operating since July 2001. In that time it has become clear that there are a number of teething problems with the Act, including systemic problems that affect the Act's workability. These have been identified through letters to ministers, case studies from industry, ERMA's own experience working with the Act, and an independent assessment undertaken by an overseas expert.<sup>1</sup>

In response, the Ministry for the Environment and ERMA formed a small working group with knowledge and experience in hazardous substances management to help develop a strategy for improving the Act's workability. The working group's report<sup>2</sup> was released in June 2003 and was positively received by the business community.

The working group identified five key areas for improving the workability of the hazardous substances provisions of the HSNO Act, and these formed the basis for the action plan laid out in the strategy. They are:

- simplify transfer<sup>3</sup> to ensure that the HSNO Act transfer process is practical, clear and timely
- remove redundancies and costs from the hazardous substance approval process and management system where they do not add to the protection of the environment and the health and safety of people and communities, and reduce barriers to the introduction of new hazardous substances used in low-risk situations
- make controls understandable for users and enforcement officers by ensuring that they are practical, clear and cost-effective, and that information on the legal requirements for hazardous substances is easy to access
- improve the way the HSNO Act fits with other legislation including the Resource Management Act 1991 (RMA), the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM), the Health and Safety in Employment Act 1992, the Building Act 1991, and the Food Act 1981.
- ensure compliance monitoring and enforcement arrangements are sound and demonstrate effective risk management.

The strategy contained a number of short-term and long-term actions to address these issues. There has been significant progress since the strategy was announced in June 2003, with all the short-term legislative actions now completed.

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<sup>1</sup> BC Environmental, *The Hazardous Substance and New Organisms Act 1996*, Ministry for the Environment, Wellington, New Zealand, 2002.

<sup>2</sup> Ministry for the Environment, *Strategy for Improving the Workability of Hazardous Substances Provisions of the Hazardous Substances and New Organisms Act*, Ministry for the Environment, Wellington, New Zealand, 2003.

<sup>3</sup> Transfer is the process where substances are assigned HSNO controls and the controls that applied under previous legislation cease to apply to the substance.

First, a bill to simplify transfer was introduced into Parliament in November 2003. Submissions on the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Bill closed on 16 January and the bill was passed in mid-March 2004. Explosives and fireworks were transferred to HSNO controls in August 2003 – the first group of substances to come fully under the HSNO regime. The technical specifications for the final outstanding sets of control regulations have also been completed and now have legal effect, and dangerous goods were transferred to HSNO controls on 1 April 2004.

In addition, ERMA has been allocated extra funding to allow it to move to a more predictable and affordable pricing system for hazardous substance approvals, thereby reducing the costs of approvals.<sup>4</sup> ERMA has also undertaken an information project to look at how the costs of compiling information for new substances applications might be reduced.

To improve the enforcement arrangements, extra funding has been allocated to ERMA to fill gaps in local capacity for hazardous substances compliance monitoring, enforcement and emergency response. ERMA, in conjunction with Occupational Safety and Health, is now in the process of developing contracts with territorial authorities.

### **1.3 How the strategy led to this discussion paper**

The Hazardous Substances Strategy identified the following long-term actions to tackle the five areas needing work:

- develop rapid and largely automatic application pathways and generic approvals for new and transferred substances, removing any redundancies in the present application pathways (see Volume 1, chapter 2)
- develop tools to make controls easier to understand, including the use of conditions and standard sets of controls (see Volume 1, chapter 3)
- change the HSNO Act to clarify the role of ERMA, territorial authorities and regional councils in hazardous substances enforcement (see Volume 1, chapter 4)
- close gaps and correct overlaps with other pieces of legislation, particularly the RMA and ACVM (see Volume 2).

The first volume of this discussion paper examines three of these actions in more detail, suggests options for achieving them and seeks feedback on the resulting proposals. The fourth action is covered to a limited extent in the second volume. The Ministry for Environment plans further work in this area, particularly looking at the hazardous waste issue, later in 2004.

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<sup>4</sup> For example, a rapid assessment now costs a fixed amount of \$500 only.

Several other technical issues regarding the operation of the HSNO Act that were not covered in the Hazardous Substances Strategy are also included in the second volume. These are:

- the HSNO Act and research
- transshipment/ containment for substances imported for export only
- approval numbers on labels
- data protection issues
- environmental emergencies
- powers of entry and inspection
- the need for a register of test certificates
- the power to revoke an approved handler test certificate
- the ability to require an importer to re-export
- under-reporting of injuries related to the use of hazardous substances
- reassessment by rapid assessment.

## **1.4 Your input is requested**

Throughout both volumes we have highlighted, and numbered, questions we would like you to consider so that we can develop more robust proposals. In your submission, please cross-refer to these numbers. For more information about the submission process and the closing date for submissions see Chapter 6: Having Your Say.

# 2 Streamlining the Hazardous Substance Application Process

## 2.1 Introduction

This chapter examines proposals to streamline the hazardous substance application process. Our objective is to cut out any steps that do not enhance protection of the environment, and the health and safety of people and communities.

We first consider what lessons we can learn from the process of transferring substances already present in New Zealand to HSNO controls when considering new application pathways. We then examine the issues raised through the development of the Hazardous Substances Strategy in more detail. Finally, we consider a proposal for a group standard, which is the combination of the generic approvals and low-risk pathway ideas that were developed under the strategy. Group standards take the best of both concepts and combine them with the lessons learned through transfer to make a flexible method for streamlining application processes.

## 2.2 The transfer of existing hazardous substances to HSNO controls

Experience with the transfer of existing substances has provided useful lessons on how best to manage the new hazardous substance applications.

The transfer of hazardous substances into the HSNO regime began in July 2001 when the hazardous substances parts of the Act commenced. With transfer due for completion by 1 July 2006, about 80,000 substances still have to be transferred to HSNO controls. We estimate that these existing substances will make up 95% of all hazardous substances present in New Zealand for at least the next 10 years.<sup>5</sup>

There have been considerable delays in transfer. The implementation of short-term actions under the Hazardous Substances Strategy resolved many of the transfer delay issues (see section 1.2 above). Challenges remain, however, with respect to the transfer of notified toxic substances.

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<sup>5</sup> Based on ERMA receiving about 100 applications for new substances per year.

Under the former Toxic Substances Act 1979, notified substances were merely notified to a regulatory agency and not assessed, and only very limited controls were in place to manage their effects. Just before the commencement of the HSNO Act, 215,000 substances were notified or deemed notified toxic substances.<sup>6</sup> ERMA has had to confront the issue of how to manage the transfer of such a large number of substances before the end of the transition period on 1 July 2006. Consequently, ERMA staff have developed several strategies to streamline processes for assessing and applying suitable controls to the substances under their transfer plan.

The transfer plan starts by eliminating from consideration substances that do not require transfer; for example, medicines, which are exempt from the HSNO Act, or substances that are not hazardous. The transfer plan then seeks to specify substances that are of low regulatory concern and so can be considered in groups rather than by individual assessment. To do this ERMA has defined some substance groups with low exposure potential based on use and quantity.<sup>7</sup> ERMA is also developing standard sets of controls for these groups to manage their effects. Each of these groups will be given a single set of labelling, packaging and safety data sheet controls.

ERMA has also grouped together higher-risk substances<sup>8</sup> that will be subject to individual consideration. ERMA estimates there are about 3,000 of these higher-risk substances.

The delays in transfer have also meant delays for applicants for new substances because they have been unable to use the 'rapid assessment pathway' available in the Act to its full potential. This provision states that if a new substance is similar to an existing already approved substance, then it qualifies for consideration under the rapid assessment pathway, which is quicker and cheaper than the full application pathway.

In considering how to streamline the application process for new substances, we note that:

- transfer, when complete, will allow for much more use of the rapid assessment pathway
- substances can be grouped together by use and quantity as well as by hazard as a means of defining a lower-risk group
- individual assessment of each substance in a lower-risk group is not required to develop controls appropriate to manage the effects of the substances.

A number of industry groups have advised us that once transfer is completed they will have little need to seek new approvals under the Act. This is particularly true for substances such as paints, solvents and fragrances, where the technology is at a stage where any changes in the composition are likely to be minimal.

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<sup>6</sup> Animal remedies and pesticides, which were not 'notified toxic substances' under the Toxic Substances Act, were included with the notified toxic substances to address a lack of transitional provisions for these substances.

<sup>7</sup> Examples of the groups ERMA currently proposes are: cosmetics, contained uses, polymers of low concern, non-isolated intermediates, animal vaccines, consumer products imported in packages, and naturally occurring substances.

<sup>8</sup> Higher-risk substances include: anything that requires approved handlers or tracking; carcinogenic, mutagenic, reproductive toxicant substances; persistent bio-accumulative toxics and very persistent very bio-accumulative substances.

## **2.3 Inefficiencies in the current new hazardous substance application system**

Applicants have indicated to MFE that applications are costly and time consuming, particularly when it comes to collecting the information required to make an application.

For those used to operating under the old Dangerous Goods or Toxic Substances Acts, HSNO requirements present a significant increase in information needed to support an application. The previous legislation did not require any public submissions and hearings or consultation with iwi – all of which may now be required under HSNO. We are not proposing to change these features of HSNO, as public consultation is one of the tenets of the HSNO regime. We do, however, wish to ensure that the HSNO application system works efficiently to achieve the objectives of the legislation.

During development of the Hazardous Substances Strategy, inefficiencies were identified in two areas of the current application system:

- a complicated and costly approval process for substances used in a low-risk manner
- individual approvals for similar products, resulting in unnecessary work for applicants and ERMA.

These are discussed in more detail below. We have also identified other inefficiencies with some of the existing application pathways. These are discussed in section 2.5.

It is important that these inefficiencies be resolved, given the costs of the New Zealand approval system relative to the small size of the New Zealand market for many hazardous substances. Newer substances tend to be more environmentally friendly and so we want to remove barriers to their introduction.

### **2.3.1 The HSNO application process is overly complicated and costly for substances used in a low-risk manner**

The risks posed by hazardous substances are a combination of two factors: hazard and exposure. The risks posed by exposure are primarily determined by the quantity used and how the substance is used. ERMA has processed several substance applications where it considered the risks posed by the substance to be very low and so did not warrant individual consideration by the full ERMA Board, which the Act required.

As pointed out earlier in this chapter, many more new substances will qualify for the existing rapid assessment pathway as the transfer of substances to HSNO controls progresses. There will, however, still be substances that do not qualify for rapid assessment as currently framed.

An example of such a substance might be a new veterinary medicine with a high hazard classification. Because it is imported in pre-packaged, labelled 30 ml syringes, can only be administered by veterinarians and is metabolised when injected into the animal, there is little likelihood of exposure and so the substance poses a low risk to people and the environment. Another example is high-temperature marking ink used for aircraft maintenance, which is only imported in quantities of 1–2 litres per year. The small volume of product used means the likelihood of exposure is very low and hence the substance poses only a low risk to the environment.

In both cases the full application pathway, with its requirement for information on environmental effects and consideration by the ERMA Board, is overly onerous, given the low risk of exposure. However, these substances do not qualify for the containment and rapid assessment application pathways because the criteria in the Act are not met and no similar substances have been approved or transferred.

There has also been criticism of the requirement in the present system for applicants to provide information about a substance when it is irrelevant given the way the product will be used. For example, detailed information on the ecotoxicity of a hazardous substance is not relevant in cases where the substance is being used in completely contained automated processes. In these instances the substance will only enter the environment if other controls, such as packaging, storage and labelling controls, fail. Detailed information on its ecotoxicity would not prevent effects occurring in this instance. On the other hand, for substances that are applied in the environment (eg, pesticides), detailed information on ecotoxicity is vital so that environmental exposure limits can be developed and safe application rates determined.

These problems could be resolved by changing the qualifying criteria for the existing application pathways or by creating another application pathway that can take into account the way a substance is used or the amount being imported or manufactured when determining:

- the type of information an applicant should be required to provide ERMA
- the level of ERMA assessment required to determine appropriate classifications and controls
- the type of controls appropriate to manage the effects of the substance.

We describe a new proposed pathway in section 2.4 with greatly reduced information requirements, minimal or no ERMA assessment, and default sets of controls for managing the effects of substances that qualify for this pathway. This new pathway is designed to link to the existing rapid assessment pathway.

#### Questions

1. Do you agree that the HSNO application process needs streamlining, particularly for substances that are low risk because of their low potential for exposure?
2. Are you planning to import or manufacture substances that you consider to have low exposure? What are their environmental, health and safety risks?
3. Could these substances be assessed using the current rapid assessment pathway once the transfer of substances is completed?
4. What information can you give us about the quantities and commercial value of such substances that would help us to assess the cost impact of this proposal for applicants?

### 2.3.2 Duplication of hazardous substance approvals

Currently most approvals are for narrowly defined substances. As a result, multiple approvals are required for similar products. This is because the applicant defines what a substance is and

most applicants, for competitive and liability reasons, prefer to define a substance in such a way that it is difficult for competitors to use their product's approval.<sup>9</sup> This means there are many more applications to ERMA than necessary for the same or similar substances. Many applicants may also be collating and lodging the same information with ERMA, and many substances may be being individually considered only to end up with the same sets of controls. This situation is clearly inefficient.

This could be improved by:

- encouraging industry or their agents to make generic applications for similar substances, using broad substance definitions to which common sets of controls will apply, or
- allowing ERMA (as opposed to the applicant) to develop and maintain broad substance groups and control sets.

ERMA has tried to encourage industry organisations to make generic or joint applications for similar substances, but commercial realities have made this very difficult to achieve. For this reason we consider that ERMA developing and maintaining broad substance groups and controls is the preferred way of significantly reducing the duplication of individual product applications. We consider the proposal in more detail as part of the new proposed pathway described in section 2.4.

As noted in section 2.2 above, ERMA is already using this approach in its handling of the transfer of notified toxic substances and is finding it an efficient way to manage large numbers of substances.

#### Questions

5. If you make an application to ERMA for a new substance, do you consider making the application to cover as broad a substance definition as possible? If not, what are the barriers to your doing this?

## 2.4 Group standard pathway proposal

As discussed above, ERMA's experience with transfer is that:

- substances can be grouped together according to use and quantity as well as hazard, thereby enabling the definition of a lower-risk group
- individual assessment of each substance in a lower-risk group is not required for developing controls appropriate to manage the effects of the substances.

Currently, however, HSNO does not allow ERMA to take into account the proposed use or quantity to be used when determining the appropriate application pathway for a new substance. The decision is made solely on the hazard category the substance comes under.<sup>10</sup> As a result,

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<sup>9</sup> Except for innovative agricultural compounds, approvals are not personalised and can be used subsequently by other parties.

<sup>10</sup> This statement applies only to the comparison of the rapid assessment and full application pathways. The containment and transshipment pathways do take into account 'use', but have a very specific and defined use criterion.

some substances are subject to overly onerous processing. As well, if ERMA were able to develop and maintain broad substance groups and controls it could significantly reduce the inefficient practice of duplicate product applications.

We have combined these concepts to develop a new type of application pathway we have called the 'group standard pathway'.

### **2.4.1 Setting up a group standard**

Under the proposed group standard pathway, ERMA would set up groups of substances and apply a single set of controls to all the substances in that group. The substances could be grouped together according to:

- compositional and/or hazard classification bands, and/or
- exposure characteristics such as use type or volume considerations.

The controls would include, for example, labelling, packaging and safety data sheet requirements. (The nature of the controls is discussed in more detail in Chapter 3.)

As well as controls, ERMA would be able to apply conditions to the group. These might be requirements to provide information on how much of the substance would be used on an annual basis, or a stipulation that applications are to be made under the rapid assessment pathway for certain uses of the substance.

ERMA would be required to allow time for submissions on a proposed substance group and its controls, and would be required to consider those submissions when finalising the detail of the group standard. Once the consultation process is complete, the group and its controls would be posted on the ERMA website for public access. The group, its controls and conditions would make up a 'group standard'.

Anyone would be able to apply to have a group standard reviewed if new information came to light about the effects of substances in the group – a system similar to the existing reassessment process. ERMA would have the power to make minor changes without going through public consultation, but would be required to consult publicly on more substantial changes.

### **2.4.2 How an applicant would use the group standard pathway**

Anyone planning to import or manufacture a substance would first have to check whether or not it had an HSNO approval or whether the substance was covered by a group standard. If the substance was covered by a group standard, there would be no need for an application to ERMA. The user would, however, be required to comply with the conditions and controls set out in the group standard. If the applicant did not think the controls or conditions were appropriate, they could apply to ERMA for a variation to the controls or make an application under another approval pathway.

The group standard might also require that an application be made through the rapid assessment pathway. This could apply if, for example, it was considered appropriate that ERMA should take into account an aspect of the substance's use on a case-by-case basis. In this case the standard would specify the information required from the applicant and would outline the discretion ERMA had in applying controls to substances in that group. The objective of this

new type of rapid assessment pathway is to give applicants more certainty and reduce processing time. This is a similar concept to the 'controlled' activities under the Resource Management Act 1991.

Applicants would pay a fee if an application to ERMA was required.

### **2.4.3 Examples of group standards**

In this section we describe three examples of possible group standards to demonstrate how the proposal could work. Please note that these are examples, *not* proposals on which we are inviting comment. If the group standard concept goes ahead, any group standards created would be released for public consultation.

The first example is for a relatively low-risk group of substances, cosmetic products, which would attract relatively straightforward controls. About 20,000 substances would fall into a group standard for cosmetic products. The group standard describes controls and conditions that must be met by importers and manufacturers of these products. If you were manufacturing a new cosmetic product that came within this definition, then you would not have to make an application to ERMA. You would, however, be required to follow the controls and conditions set out in the standard.

<b>Example 1: Group Standard for Cosmetic Products</b>
<p><b>Definition</b></p> <p>A cosmetic product shall mean any substance or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition.</p>
<p><b>Controls</b></p> <p>The following controls must be met.</p> <ul style="list-style-type: none"> <li>• The product labels must state the following: Xxx, Xxx.</li> <li>• The product must be packaged in the following manner: Xxx, Xxx.</li> <li>• Volumes of x of the product must be stored in the following manner: [flammability and oxidising controls for high-volume storage, compatibility of storage].</li> <li>• Xxx.</li> </ul>
<p><b>Conditions</b></p> <p>Products in this group must not contain the following substances at any concentration:<sup>11</sup></p> <ul style="list-style-type: none"> <li>• N-5-Chlorobenzoxazol-2-acetamide</li> <li>• all toluenediamines</li> <li>• and phenylenediamines</li> <li>• Xxx.</li> </ul> <p>Products in this group must not contain the following substances except subject to the following restrictions and additional controls:</p> <ul style="list-style-type: none"> <li>• hydrogen peroxide, and other compounds or mixtures that release hydrogen peroxide, including carbamide peroxide and zinc peroxide are only allowed in the following types of products at the listed concentrations: <ul style="list-style-type: none"> <li>(a) hair-care preparations – max. 12% H<sub>2</sub>O<sub>2</sub> (40 volumes) present or released</li> <li>(b) skin-care preparations – max. 4% of H<sub>2</sub>O<sub>2</sub> present or released</li> <li>(x) Xxx</li> </ul> </li> </ul> <p>Additional label statements:</p> <p>For (a) or (b):</p> <ul style="list-style-type: none"> <li>• CONTAINS HYDROGEN PEROXIDE, AVOID CONTACT WITH EYES, RINSE EYES IMMEDIATELY IF PRODUCT COMES INTO CONTACT WITH THEM</li> </ul> <p>For (a) only:</p> <ul style="list-style-type: none"> <li>• WEAR SUITABLE GLOVES</li> </ul> <p>Products in this group may only contain the following preservatives/colourants/UV filters:</p> <ul style="list-style-type: none"> <li>• Xxx</li> </ul>
<p>NOTE: To add a colourant or preservative or UV filter to this group standard you will have to apply to ERMA New Zealand for inclusion on the list and submit toxicological information.</p>

The second and third examples are for a higher-risk group of substances, aqueous-based industrial cleaning products and copper- and/or zinc-based anti-fouling paints. About several thousand substances would qualify for the aqueous-based industrial cleaning products group standard, while tens of substances would qualify for the copper- and/or zinc-based anti-fouling paint group standard.

<sup>11</sup> List taken from the EU Cosmetics Products directive (76/768/EEC as amended).

Given the potential effects of these latter two groups of substances, they attract more controls and would require some interaction with ERMA. In the case of the anti-fouling paints, you would have to submit an application to ERMA before you could import or manufacture the substance. However, the information required and the type of controls ERMA could apply would be set out in the standard, giving you more certainty about the application process in advance.

The controls would bring together all the relevant parts of the HSNO regulations into a simple statement about what needs to go on to the label, for example. In order to be a simple statement, the labelling control would need to be less performance-based and consequently less flexible than the requirements set out in the HSNO regulations. The controls aspect of the proposal is described further in Chapter 3.

<b>EXAMPLE 2: Aqueous-based industrial cleaning products</b>
<p><b>Definition</b></p> <p>Aqueous-based industrial cleaning products shall include all aqueous industrial cleaning products based on alkaline, acidic or oxidising chemicals.</p>
<p><b>Controls</b></p> <p>For alkaline-based cleaners, the following controls must be met.</p> <ul style="list-style-type: none"> <li>• The product labels and information must state the following and that information must be followed: Xxx, Xxx [including, for example, disposal requirements, first aid and emergency management directions]</li> <li>• The product must have an SDS that states the following: Xxx</li> <li>• The product must be packaged in the following manner: Xxx, Xxx</li> <li>• Volumes of x of the product must be stored in the following manner: [flammability and oxidising controls for high-volume storage, compatibility of storage).</li> </ul> <p>For acid base cleaners, the following controls must be met: Xxx</p> <p>Xxx</p>
<p><b>Conditions</b></p> <p>Products in this group may only contain the following surfactants and comply with the additional controls as listed for each group:</p> <ul style="list-style-type: none"> <li>• [list of highly ecotoxic (9.1A) surfactant and appropriate controls]</li> <li>• [list of ecotoxic surfactants (non-biodegradable – 9.1B, 9.1C) and appropriate controls]</li> <li>• Xxx</li> </ul> <p>When importing or manufacturing a product in this group standard you must notify ERMA New Zealand of the composition of your product, your intended use and quantities manufactured/imported.</p>

<b>EXAMPLE 3: Copper and/or zinc anti-fouling paints</b>
<p><b>Definition</b></p> <p>Copper and/or zinc anti-fouling paints shall include flammable copper and/or zinc-based products applied to hulls of vessels and structures in contact with water to prevent the build-up of aquatic organisms by the slow release of biocides.</p>
<p><b>Controls</b></p> <p>Xxx</p>

#### Conditions

- Products in this group standard may not contain any components with 6.6A, 6.7A or 6.8A classifications in any concentration.
- Products in this group may only contain the following co-biocides at the listed concentrations:
  - (a) Diuron up to 100 g/L
  - (b) Irgarol up to 50 g/L
  - (c) Xxx

To use this group standard you must apply to ERMA New Zealand for an approval, submitting full compositional information and a full data dossier in support. The data dossier must include the following: xxx. The application will be processed by rapid assessment.

NOTE: Some products may be limited to specific uses such as restricted to vessels of a certain size, structures of a certain type, etc.

## 2.4.4 Discussion of the proposal

The group standard idea captures the ‘low-risk’ proposal outlined in the Hazardous Substances Strategy. In our subsequent investigations we found that while it was possible to draw up one set of generic criteria that captures low-risk substance uses and to apply a single set of controls to that group, the number of substances that actually qualified was very small – too small to adequately address the efficiency issue. The group standard proposal, however, allows for the development of several low-risk groups of substances and will hence be more flexible and efficient. In effect, the group standard combines the low-risk concept, the generic approvals concept and the standard sets of controls concept, all three of which were outlined in the Hazardous Substances Strategy.

The proposal maintains public involvement in the process for both defining the group and setting controls for a group of substances. Submitters on the standard will, however, need to consider a group of similar substances rather than a single substance. This may increase the work involved in compiling submissions, but the advantage is that it potentially reduces the number of submissions individual submitters have to make to ERMA.

This proposal increases certainty for importers and manufacturers. They would be able to see in advance the controls applying to this group of substances before making a decision about whether or not to import or manufacture.

Another advantage of the proposal is that it would allow agricultural compounds and veterinary medicines to be dealt with more efficiently than under the current provisions. While we consider it to be appropriate for such compounds to continue to be controlled under both the HSNO and ACVM Act, group standards will reduce the need for dual approvals for some of these products. For example, a group standard could be developed for ‘finished-dose companion animal medicines’ like antibiotics or anti-inflammatories prescribed by veterinarians. It would eliminate the need for an application under HSNO while still requiring the importer to comply with the HSNO controls. It is worth noting that once transfer is complete, many new ACVM products will qualify for the rapid assessment pathway.

A disadvantage of the proposal is that there will be a time lag between the legislation being passed and the establishment of the groups. However, given that ERMA is already consulting the public on groups of existing notified toxic substances and developing a single set of controls for these groups, it will not take long for ERMA to complete a wide range of group standards.

## QUESTIONS

6. How would this proposal work in practice from the perspective of potential submitters, applicants and other groups?
7. How do you think groups should be defined?
8. Are there particular types of applications that should always be considered individually?

## 2.5 Options for improving the efficiency of the existing application pathways

There are two areas to be considered when considering how the efficiency of existing application pathways might be improved:

- the efficient classification of substances
- efficient pre-application steps.

### 2.5.1 The classification process

In the case of new substances, ERMA is required to classify the substance in detail even though the detail may not be needed for determining whether to approve the substance or what controls to apply to it.

Substances are first classified (eg, 6.1A acutely toxic or 6.3A skin irritants), and default controls based on those classifications then apply. ERMA then reviews the default controls and varies them as appropriate. If a substance is 6.1A, then it triggers all the default class 6 controls. So for the purpose of determining what controls apply to the substance, it does not matter whether the substance also has other class 6 classifications – it has already triggered all the controls. While there may be other reasons why this information is necessary, it is not necessary for determining controls.

Determining the detailed classification can be extremely time-consuming and expensive for ERMA, and it would be more efficient if ERMA were given more flexibility in the level of information it was required to gather for classification. ERMA already has the flexibility to judge how much detail it must gather for classifying substances for transferred substance assessments, and in the interests of greater efficiency in new application processing we propose to introduce a similar provision for those applications.

## 2.5.2 Pre-application information

The most important stage for a potential applicant under HSNO is the pre-application step. At this stage it is determined:

- whether the substance is hazardous and covered by HSNO, and if it is,
- whether the substance is already approved, and if not,
- which of the five application pathways is the appropriate one to follow.

It is currently difficult to determine the answers to these questions in the case of some substances, meaning that intending applicants need to be in frequent contact with ERMA. This means extra and unnecessary costs for both ERMA and the applicant.

One way of making the system more efficient is to improve existing information systems, and the Ministry for the Environment is currently working with ERMA on ways this pre-application step can be automated as much as possible. One proposal is to adapt the ERMA approvals database so it can automatically answer questions on the status of substances.

### QUESTIONS

9. Do you agree that ERMA needs more flexibility in the information it requires for classification in the case of new application assessments?
10. What suggestions do you have for improving the efficiency of the pre-application advice step?

# 3 Improving how Controls are Communicated

The application of controls to hazardous substances is the key to achieving the purpose of HSNO in protecting the environment and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances. It is these controls on packaging, labelling and storage, for example, that reduce the likelihood of any adverse event and, should one occur, reduce the potential damage.

The HSNO control regulations allocate the controls that apply to hazardous substances of a given hazard classification. Experience shows that the controls are appropriate – in other words, the level of performance specified is appropriate. However, it has also become clear that it is difficult for users to understand exactly what is required of them from the regulations alone.

This chapter discusses a new tool – standardised sets of controls – to allow ERMA to more effectively communicate to users what they need to do to comply with HSNO. This proposal nicely complements the group standard proposal described in section 2.4.

## 3.1 How the controls work now

The controls are drawn from the regulations. The HSNO regulations are different from those under the now outdated laws in that they:

- define the default requirements that apply to a substance according to its hazard classification
- give a general outline of the outcomes to be achieved, rather than stipulating what must be done
- are organised by the function they perform (eg, containment, managing emergencies) rather than by the means by which they may be implemented (eg, labels), or the site where they are to be implemented (eg, dangerous goods workrooms).

Industry has indicated that in order to make the regulations user-friendly for those implementing them, they would be better communicated as sets of requirements relating to the way they are implemented (eg, labels for workrooms). These should also be directly related to the particular activity being carried out.

The Act provides for industry to prepare and put forward codes of practice that can become their approved means of meeting the controls on their particular substances. At this stage, few of these have been prepared or approved, largely due to the fact that the transfer of many substances to HSNO controls has not yet occurred. While these codes of practice may be practicable for major industries, smaller businesses are unlikely to have the time or expertise to compile effective codes of practice. The proposed standardised sets of controls would be particularly useful for these sectors.

## 3.2 Proposal for ERMA to issue standardised sets of controls

The proposal for standardised sets of controls can be described as follows.

1. ERMA would assemble controls into sets (packages), taking into account:
  - the HSNO regulations
  - the possibility of variations to these controls based on the criteria set out in HSNO Act
  - the possibility of drawing on controls from other jurisdictions as provided for in the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act, which came into force in March 2004.
2. The packages would relate to the means of implementing the controls rather than the function the controls perform, such as putting together into one package all the requirements that have to be on a label – whether they are emergency phone numbers or product identification information.
3. ERMA would outline the requirements for groups of substances (products) as they apply to particular users or sectors, such as car painters, drycleaners, printers, stock and station agents or horticulturalists.
4. The controls listed in the packages would generally outline exactly what needs to be done to meet the requirements of the relevant regulations. They would therefore be more prescriptive and less flexible than the controls in the HSNO regulations. If an industry prefers to develop its own code of practice using the performance-based regulations, rather than complying with the more prescriptive standard, then they will still have that ability.

Currently, ERMA establishes controls for a new substance when granting an application, using the regulations as provided for under section 77 of the Act. ERMA applies HSNO controls to existing substances via the transfer process. In both the new application and transfer cases, interested parties are given the opportunity to make submissions to ERMA on the application or the transfer controls. We propose that the public also have a say in the process when ERMA establishes the standardised control sets for group standards.

We propose that the standardised sets of controls would be deemed a regulation for the purposes of the Regulations Review Committee and would have the legal status of controls under the Act.

### QUESTIONS

11. Would it help you and your business if ERMA were to issue standardised sets of controls, and how would it be of assistance?
12. Would these standardised controls reduce your costs of complying with the HSNO Act? If so, can you quantify that reduction in hours or dollars?
13. How many other businesses like yours could be similarly affected?

# 4 Compliance and Enforcement

## 4.1 Background

### 4.1.1 The Hazardous Substance Strategy – an interim solution in place

The Hazardous Substances Strategy identified compliance monitoring and enforcement as a high priority, and recommended the following actions to address existing and future enforcement issues:

- enable ERMA to have a greater role and accountability for directing and co-ordinating enforcement agency activities through having new funding to contract other enforcement agencies to carry out particular work
- develop arrangements to maintain local capacity in hazardous substance compliance activities
- in the longer term, amend the HSNO Act to clarify the role of ERMA, territorial authorities and regional councils with respect to compliance monitoring and enforcement for hazardous substances.

As part of the development of the strategy, it was recognised that it is difficult for many district and city councils to meet their hazardous substance obligations given the small role specified in the HSNO Act. Many councils have been opting to let skilled staff go, potentially creating gaps in skills across the country. To address this local capacity issue and to help ERMA take a stronger role in HSNO enforcement in the short term, the government has approved extra funding for ERMA for three years.

ERMA will use the funding to ensure there are skilled hazardous substance enforcement officers throughout the country. ERMA, in conjunction with Occupational Safety and Health, will do this by contracting territorial authorities or groups of territorial authorities to carry out hazardous substances compliance monitoring, enforcement and emergency response activities in the workplace on behalf of central government. ERMA will encourage groups of councils to discuss the opportunities for jointly employing a hazardous substance enforcement officer for non-workplace compliance. This joint approach, together with the contracted central government work, should help local authorities take a strong role in hazardous substance compliance monitoring and enforcement.

Funding has also been approved to carry out a pilot programme to test regional council involvement in HSNO enforcement and for some regional council training in the HSNO Act.

## 4.1.2 Compliance monitoring and enforcement of hazardous substance controls

Section 97 of the HSNO lists who the enforcement agencies are and in what places or what subject areas they are responsible for hazardous substances enforcement. This is summarised in Table 1.

**Table 1: Compliance and enforcement under the HSNO Act**

Agency	Area of responsibility for enforcement
Ministry of Health	In all places, to protect public health
Occupational Safety and Health Service, Department of Labour	In any place of work
Maritime Safety Authority	On any ship or wharf
Policy and Land Transport Safety Authority	In and on roads, rail and vehicles
Civil Aviation Authority	On any aircraft or in any airport
Ministry of Consumer Affairs – Energy Safety Service	In, on or around any gas distribution system, installation or appliance
Territorial authorities	Premises not covered by other agencies (private dwellings and public places, eg storage of pesticides at home); while inspecting premises under the RMA; functions transferred by other enforcement agencies

These roles were designed to ensure maximum overlap with existing agency functions, with a view to the ‘one-stop shop’ idea, meaning a business would not have to undergo inspections by a plethora of government agencies.

The main task of enforcement agencies is to make sure the controls placed by ERMA on hazardous substances are being complied with. Enforcement agencies are required to do this by:

- appointing and warranting trained enforcement officers
- liaising with each other to clarify and manage potential overlaps and gaps in responsibilities
- carrying out compliance checks, including checks on compliance with controls and test certificates
- providing information to ERMA
- promoting compliance with the Act and with the conditions set by ERMA on approvals
- giving advice and information about the HSNO Act.

There are potential overlaps and gaps between the enforcement agencies’ roles, because it is not feasible to list all the situations in legislation. In order for the compliance regime to work well, therefore, there needs to be a large degree of co-operation between agencies and co-ordination by ERMA.

It is also worth noting that regional councils and territorial authorities have land-use control functions in relation to hazardous substances and hazardous facilities under the RMA (sections 31 and 62).

## 4.2 Clarifying the current role of territorial authorities under the HSNO Act

The funding approved by government in 2003 is for three years only and is considered a temporary solution to the problem that has arisen with the decision of a number of territorial authorities not to retain hazardous substance enforcement people on their staff. We have heard of several reasons for territorial authorities' making this decision, including councils considering:

- their role in this area is not clear
- the role does not require any active work on their part
- it to be a lower priority for them, and given scarce resources and the small size of the role they have no choice but to withdraw completely from hazardous substances enforcement.

Some councils, on the other hand, are being very proactive about their role in hazardous substance enforcement.

In order to address the first two issues raised above, we propose to change section 97 to have an explicit statement about the locations where territorial authorities are responsible for hazardous substances enforcement:

*Territorial authorities:*

- *are responsible for hazardous substance enforcement in public places and private dwellings (except for in, on or around any gas distribution system, installation or appliance, which is covered by the Energy Safety Service, or any public health issues covered by the Ministry of Health);*
- *can choose to enforce the HSNO Act while inspecting premises under the RMA if they wish; and*
- *are responsible for hazardous substance enforcement where the function has been transferred by another enforcement agency.*

As is currently required, territorial authorities and the other enforcement agencies have to work together in a co-operative manner to develop good working relationships for dealing with those incidents that do not clearly fall under one agency's responsibility.

With regard to the limited extent of territorial authorities' role, we wish to hear from councils as to whether the interim solution of councils jointly employing a hazardous substance enforcement officer, and allowing that person to also contract to ERMA and OSH, is viable in the longer term.

## QUESTIONS

14. We propose changing the Act to explicitly state that territorial authorities are responsible for hazardous substances in public places and in private dwellings, except for in, on or around any gas distribution system, installation or appliance, which is covered by the Energy Safety Service, or any public health issues covered by the Ministry of Health. Will this help to clarify territorial authorities' role under the HSNO Act?
15. Do you consider that the interim solution of councils jointly employing a hazardous substance enforcement officer, and that person also picking up work from ERMA and OSH on contract, is viable in the longer term?
16. At a discussion meeting with several local government representatives in September 2003, many present indicated that their preference is to see the role of territorial authorities increased in the HSNO legislation to a level where a medium-sized council could employ a full-time equivalent HSNO specialist. What is your view? We are particularly interested to hear from all councils.

### 4.3 An enforcement role for regional councils under the HSNO Act

A committee<sup>12</sup> set up by the Minister for the Environment in 2001 recommended that regional councils be included in HSNO enforcement, particularly for dealing with agrichemical trespass incidents. We have had feedback from some regional councils that they can see real advantages in this proposal, while others oppose it.

The focus of the RMA is on managing the actual or potential adverse effects on the environment that might occur when hazardous substances are stored, used, disposed of, transported or discharged at a particular site. The RMA, through district and regional plans, provides the means for developing methods and rules to manage hazardous substances on a site- and environment-specific basis.<sup>13</sup> Regional councils' responsibility for controlling hazardous substances under the RMA comes under their functions relating to managing the discharge of contaminants into the environment.

HSNO controls on hazardous substances have a national effect – in other words, the same controls apply regardless of where the site is located. The HSNO controls set the bottom line for controls on hazardous substances. Local authorities may set stricter standards through setting requirements in their plans or resource consent conditions.<sup>14</sup> For example, a local council might require that a large tank containing petrol must be located a greater distance inside the site boundary than is required by the HSNO regulations because there is a fireworks factory next door.

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<sup>12</sup> Agrichemical Trespass Ministerial Advisory Committee.

<sup>13</sup> Ministry for the Environment, *Acting Together – Links between the HSNO Act and the RMA*, Ministry for the Environment, Wellington, New Zealand, 2003.

<sup>14</sup> Resource consents that conflict with proposed HSNO controls are not automatically made void when that control comes into legal effect. However, when the consent is reviewed or renewed, it must be updated to at least meet the relevant HSNO controls.

In the case of the use of agrichemicals, the HSNO Act specifies requirements for exposure limits outside the application area, record keeping of the spray activities, the standard of equipment, and the qualifications of the people handling the chemicals. The regional plan may further require that neighbours are notified before spraying commences.

The HSNO Act requires regional councils to update their regional plans as substances are transferred from transitional controls to HSNO controls so that the plan is at least as strict as the HSNO controls. The Act also requires councils to update any resource consents when they come up for review or renewal so that they are at least as strict as the HSNO controls.

If any HSNO controls contained in RMA plans and resource consents are breached, then a regional council can enforce these requirements under the RMA. We expect the process of updating plans and consents to take some time, particularly as the HSNO controls on some substances may not be known until transfer is completed in 2006.

It will be difficult to include codes of practice, for example, in regional rules as regional rules cannot refer to third party documents that can be updated. Where an activity is deemed permitted by the local regional plan, allowing regional councils to call upon the activity-based requirements of the HSNO Act could result in better environmental outcomes.

Another issue of concern is the reporting and monitoring of incidents involving hazardous substances. Currently, regional councils are the first port of call for such incidents through their well-established 'Pollution Hotlines'. These are generally a 24-hour-a-day 7-day-a-week response service. A lot of information about hazardous substances in the environment (eg, spray drift incidents) is collected by councils, but it is ERMA that makes the decisions about appropriate controls for hazardous substances. We therefore think that it is important to establish a reporting relationship between regional councils and ERMA.

Another aspect to consider is how HSNO enforcement agencies and regional councils can complement each others' roles. Regional councils carry out inspections under the RMA, either responding to incidents or checking compliance with resource consents. An option might be to have regional council officers also report to OSH or territorial authorities on basic HSNO requirements while they are on the premises (eg, whether the appropriate up-to-date test certificates are held). This could be achieved through a simple agreement and would not require any change to the law. It would, however, require OSH and ERMA to offer training for regional council staff so that they knew what to look for.

We propose that regional councils:

- be responsible for hazardous substance enforcement where hazardous substances are discharged into the environment, including but not limited to discharges from trade and industrial premises
- can choose to enforce the HSNO Act while inspecting premises under the RMA if they wish
- be responsible for hazardous substance enforcement where the function has been transferred by another enforcement agency.

## QUESTIONS

17. Should regional councils be responsible for enforcing hazardous substances enforcement under the HSNO Act where hazardous substances are discharged into the environment?
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?
19. What are the resource implications for councils if they do?

## 4.4 Formalising emergency response planning under the HSNO Act

Territorial authorities and regional councils need to be able to contribute to, and plan for, emergency management in their region in the event of all types of emergencies. Several pieces of legislation are required to be used in this planning process. These include the HSNO Act and the HSNO Emergency Management Regulations, and the Civil Defence and Emergency Management (CDEM) Act. In addition, various agencies and committees need to work together to ensure sound preparation for emergencies involving hazardous substances, including hazardous substances technical liaison committees (HSTLCs).

There are several key areas in the HSNO Act and regulations that provide for dealing with hazardous substances emergencies, including requirements for emergency management planning for individual sites that use hazardous substances. The system is based on a three-level framework, which has cumulative requirements: level 1 provides for situations where a single person may be affected; level 2 for situations where several people and/or the environment may be affected; and level 3 for situations where a large number of people may be affected and/or there may be large-scale environmental contamination.

The requirements at each level are cumulative, so that at the very least information about a hazardous substance must be stored, and, at the other end of the scale, an emergency management plan must be in place. The HSNO Emergency Management Regulations are very specific and have been broken down into different groups of hazardous substances as well as requirements for different amounts of the same substance.

In 2002 the CDEM Act replaced the Civil Defence Act 1983. The CDEM Act requires regional councils to co-ordinate a regional group for the purposes of planning activities relating to civil defence emergencies for readiness, reduction, response and recovery. Civil defence and emergency management groups:

- must be formed within regions
- must form a civil defence and emergency management plan for their region,
- must include the HSNO Act (and a raft of other legislation) in their civil defence and emergency management plan
- are led by a national civil defence and emergency management group and plan (plan due 2005).

The functions of the civil defence and emergency management group include hazard management for their regions, providing resources and providing for emergency response and recovery. Each civil defence and emergency management group in each region is required to form a co-ordinating executive group. These are usually made up of the chief executive officer of each member local authority, a senior member of the Police and Fire Service, the chief executive officer of the hospital and health services, and any other person co-opted by the civil defence and emergency management group.

The function of the co-ordinating executive group is to:

- provide advice to the civil defence and emergency management group
- implement the decisions of the civil defence and emergency management group
- oversee the development, maintenance, monitoring and evaluation of the civil defence and emergency management group plan.

The impact for the HSNO legislation is that the CDEM Act provides a good framework, which requires the key agencies to work together to plan for, respond to and give advice on emergency situations, including hazardous substance emergencies.

Hazardous substances technical liaison committees (HSTLCs) grew out of the Royal Commission of Inquiry into a chemical incident in Parnell in 1973. The Royal Commission recommended setting up formal meetings between the emergency services within regions. These are known as emergency services co-ordinating committees (ESCCs). At their first meeting, the national ESCC realised that they had come together because of a chemical incident but no one on the committee had sufficient technical knowledge about chemicals. It was therefore decided to form a sub-committee to advise on chemical incidents comprising toxic substance inspectors from the Department of Health, dangerous goods inspectors from both Occupational Safety and Health and territorial authorities, and the former Department of Scientific and Industrial Research. Their role was purely to provide technical advice to emergency services while still carrying out their own statutory functions. The participation of enforcement agencies in HSTLCs has been relatively informal.

While historically the focus has been on being an advisory body – to give advice to the lead agency dealing with a particular response – the committees have also been used as a forum to clarify roles in preparation for particular emergencies (eg, which agency will take the lead in which circumstances). HSTLCs have also set up communication systems so that agencies know which of their colleagues to notify when particular incidents occur. HSTLCs operate with some success in some regions.

The New Zealand Fire Service commissioned a report in November 2003 to:

- ensure there was a national capability for HSTLCs
- review roles and functions
- ensure HSTLCs are able to function within the emergency management structure.

A recent survey (undertaken by New Zealand Fire Service) shows that most HSTLCs are operating at a level appropriate to their needs. However, anecdotal comments from recent discussions with 11 regional councils would suggest that there is some variance throughout New Zealand with regard to the effectiveness of the HSTLCs.

The National Hazardous Substances Technical Liaison Committee report concludes that there are two options regarding the future status and functions of HSTLCs.

- Option 1: It is seen as important for the structure of the HSTLC to remain informal, so that it is essentially a liaison group to provide advice in the event of hazardous substance emergencies. They should not be formally linked to the co-ordinating executive group.
- Option 2: The HSTLCs will logically become a sub-committee of the co-ordinating executive group. This will allow them to be involved in planning and to contribute their specialist knowledge to their regional emergency plan.

HSTLCs clearly provide an opportunity for co-ordination between HSNO enforcement agencies and ensure a link between individual site-based emergency response planning and larger incident emergency response planning under the CDEM Act. However, there is some variability in how effective the co-ordination is across the country, and a question as to whether formalising HSTLCs under the HSNO Act would help to ensure this. We would like to receive advice from those involved in HSTLCs and emergency response planning as to what they view as the best approach.

At the time of writing, the National Hazardous Substances Technical Liaison Committee had met and decided that the option they preferred was option 1, whereby the committee would remain informal and therefore would not be linked to the co-ordinating executive group. The National Committee was concerned that formalising the committee would generate a bureaucratic system that could compromise the effective relationships, networking and good technical advice that come out of the current informal HSTLC system.

#### QUESTIONS

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)?

## **5 Regulatory Impact Statement – Data Collection**

The final proposals for amending the HSNO Act will require a regulatory impact statement to present to Cabinet for approval. The regulatory impact statement will provide Cabinet with an assessment of the net benefit of the preferred option for each issue. This requires us to estimate the costs and benefits associated with each of the proposals in this paper.

We would welcome your assistance with this. Please feel free to supply us with any firm data or general comments you may have on the effect the amendment proposals might have on your costs compared with the current situation, and any benefits you think there may be in the various options. Information meeting criteria laid out in the Official Information Act will be kept confidential on request.

# 6 Having Your Say

## 6.1 Ministry contact

If you have any questions about any of the points raised in this discussion paper please contact:

Ian Cairns  
ian.cairns@mfe.govt.nz  
Phone: 04 916 7657  
Fax: 04 916 7641.

## 6.2 Closing date

Submissions close on **Friday 11 June 2004**.

## 6.3 Information for submitters

Please include a postal address, telephone number and email contact address in case we need to get in touch with you to clarify any part of your submission. In the introduction to your submission, please tell us a little about yourself. For instance, if you are making the submission as an individual:

- where do you live?
- what is your interest in the proposed amendments?
- mention any relevant knowledge, experience or qualifications you may have.

If you are making a submission on behalf of a business or an organisation:

- what particular sector is your business or organisation involved in?
- how many people do you represent?
- what process has your organisation gone through to arrive at the views in the submission?

Please make it clear whether you support, oppose or see other options to achieve the objective of each proposal. To help us in our analysis of the submissions, please reference the number of the question, or the relevant paragraph or section of the discussion paper, alongside your submission.

*Ministry policy is to treat submissions as being in the public domain. If you want your submission kept confidential, please indicate, with reference to the Official Information Act (1982), your reasons for this.*

# Glossary

ACVM	Agricultural Compounds and Veterinary Medicines Act (1997)
ANZECC	Australian and New Zealand Environmental and Conservation Council
CDEM	Civil Defence and Emergency Management
ERMA	Environmental Risk Management Authority
HSNO	Hazardous Substances and New Organisms Act 1996
HSTLC	Hazardous Substance Technical Liaison Committee
NO&OM	New Organisms and Other Matters Bill (amendments to HSNO that became law in October 2003)
OSH	Occupational Safety and Health Service, Department of Labour
RMA	Resource Management Act 1991
SDS	Safety Data Sheet
TA	Territorial Authority – city or district councils