



# Improving the HSNO Act's Workability

## HAZARDOUS SUBSTANCES STRATEGY

The purpose of the Hazardous Substances and New Organisms Act 1996 (HSNO) is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.

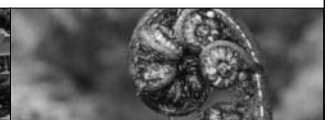
In 2003, Cabinet agreed to a strategy to address 'workability' concerns with the hazardous substances provisions of HSNO. With input from industry, government, local authorities and the public, long and short term actions were identified. The short term actions were completed in 2004 and included matters such as the transfer of explosives, funding to support territorial authority hazardous substance enforcement, funding for the Environmental Risk Management Authority's (ERMA) approvals, and amendments to HSNO to enhance the transfer process.

In October 2004 Cabinet also approved policy changes to give effect to the long term actions of the strategy. These changes have been drafted into the HSNO (Approvals and Enforcement) Amendment Bill that is currently before the Education and Science Select Committee. The submission period closed on 15 April 2005 and hearings will be completed in May 2005. The following summarises the features of the Bill.

## GROUP STANDARDS

The 'group standards' mechanism is provided as a means to address three major concerns:

- a) ERMA has been confronted with how to manage the transfer of approximately 70,000 notified toxic substances (NOTS) by 1 July 2006. HSNO currently allows for transfer of groups focused on the hazards posed by the substances rather than the individual, everyday product group eg, paints. Using the current system, businesses need to be familiar with many controls for all the hazardous substances in their products rather than one set of controls for each product group.
- b) For new applications, the existing requirements of HSNO are leading importers and manufacturers to define their applications very narrowly to avoid 'opening the gate' for other applicants to gain from their approval. This means new substances, that are similar to previously assessed substances, are requiring individual assessments for approval while ending up with basically the same controls being assigned. Such individual applications and assessment for such substances is inefficient for both ERMA and the applicants.
- c) Many wastes, including manufactured articles, have hazardous characteristics that match those recognised by the HSNO thresholds. HSNO controls some aspects of wastes eg, it can control wastes that are directly excesses of approved hazardous substances and by-products with hazardous properties that result from the manufacture of any substance. HSNO does not control hazardous by-products from the manufacture of anything other than a substance (eg, electroplating wastes) and manufactured articles that combine a hazardous substance with other components. Further, while the Resource Management Act can offer some controls, it too is limited particularly in regard to the storage, transport and tracking of such materials.



### **The group standards amendment**

Under a 'group standards' mechanism substances of a similar type may be grouped together eg, adhesives, paints, cleansers. Compliance requirements (conditions) would be attached to a group standard and if complied with, no approval will be necessary. Conditions will be user-friendly versions of controls and legally enforceable. Group standards will be developed by ERMA through a process which includes public consultation.

Hazardous wastes (including manufactured articles) that meet the hazard thresholds identified in HSNO regulations, but are not currently regulated as a HSNO hazardous substance, will be able to be controlled by group standards. Conditions that apply to these wastes could address, amongst other matters, tracking, reporting and cost recovery.

### **Benefits of group standards**

- Significant cost savings to transfer NOTS and assist completion by July 2006.
- Manufacturers and/or importers of low regulatory concern hazardous substances will be covered by a group standard and not need individual approvals.
- Compliance requirements (conditions) will be simple and user-friendly.
- New Zealand will be better able to progress programmes for harmonisation and mutual recognition with Australia, the US and Australia.
- HSNO will be able to control certain hazardous wastes to avoid risks to people and the environment.

### **ENFORCEMENT**

Section 97 of HSNO identifies government agencies, departments of state and territorial authorities that are required to enforce HSNO. Regional councils were excluded from this yet they have extensive experience in environmental monitoring and enforcement under the RMA. They are considered well positioned to carry out HSNO enforcement.

### **Enforcement amendment**

Regional councils will have the option to enforce HSNO and be able to prescribe fees as currently provided to territorial authorities under s23 of the HSNO Act.

The Ministry for the Environment, OSH and ERMA are investigating ways to further improve the effectiveness of HSNO enforcement and associated funding requirements. The results will be reported to the Government in July 2005.

### **Benefits of enforcement**

- Regional councils will have the option to carry out HSNO enforcement work for the protection of the environment.
- This will be complementary to the existing roles of regional councils under the RMA.
- Regional councils with other priorities, or lacking the necessary expertise or financial resources will not be obligated to become an enforcement agency.

### **EXPOSURE LIMITS**

HSNO enables ERMA to set environmental and tolerable exposure limits to control exposure from the intentional use of a hazardous substance. Environmental exposure limits (EELs) help protect the environment from the effects of eco-toxic substances and tolerable exposure limits (TELS) help protect humans from the effects of toxic substances.

The rigid constraints in how these controls are set are resulting, in some cases, in limits that are below the ability to measure, difficult to enforce and do not account for local environmental variations. Further, the rigid process for setting these limits prevents ERMA from adopting internationally accepted methods.

### **EELs and TELs amendment**

The process will be modified to allow ERMA to set EELs and TELs as guidance values for use by regional councils. EELs and TELs will be able to be set at a point in time after approval or for substances already approved. ERMA will be able to adopt international values and methodologies if appropriate to New Zealand conditions. A central register of EELs and TELs information will be kept for enforcement agencies and local government.

### Benefits of EELs and TELs

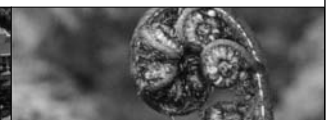
- Provides a more flexible process for setting EELs and TELs values.
- Allows use of international values and methodologies if appropriate to New Zealand.
- The range of values set can account for and reflect local factors.
- The values can be for guidance rather than mandatory controls.

### OTHER PROPOSALS

Cabinet has approved a number of other amendments to improve HSNO 'workability' matters specific to certain enforcement agencies, businesses, research institutes and government departments. These are summarised below:

- The rapid assessment criteria will be extended to include substances reformulated to have lesser hazardous properties.
- Inspectors operating under the Health and Safety in Employment Act 1992 (HSE) will be able to inspect for HSNO compliance using the HSE powers of entry and inspection.
- ERMA will be given the power to require test certifiers to provide copies of all test certificates. This information will be held on a centralised register for enforcement and compliance activities.
- ERMA will have the ability to revoke an approved handler or filler's test certificate if they are found to be incompetent, negligent or they provided false or misleading information.
- Customs will have the ability to require the importer to re-export an unapproved hazardous substance after being off loaded within New Zealand.
- It will be made clear that prosecution under s209 of the Customs and Excise Act can be brought in respect of unapproved hazardous substances.
- There will be a fast track approval provision for hazardous substances that might be needed to clean up an environmental emergency.
- Exempt laboratories will be able to sell unapproved hazardous substances to other exempt laboratories in New Zealand for research and development.

- For sale to an overseas laboratory the New Zealand laboratory must hold evidence that the use of the substance at the receiving laboratory is for research and development.
- The activities of exempt laboratories will be extended to include any scientific investigations.
- All diagnosing medical practitioners will be required to report injuries caused by hazardous substances to the Medical Officer of Health.



**WANT TO KNOW MORE?**

Contact the Ministry for the Environment by phoning (04) 917 7400, emailing [information@mfe.govt.nz](mailto:information@mfe.govt.nz), writing to PO Box 10362, Wellington, or see our website: [www.mfe.govt.nz](http://www.mfe.govt.nz) or ERMA's website: [www.ermanz.govt.nz](http://www.ermanz.govt.nz)