

In Confidence

Office of the Minister for the Environment

Cabinet Economic Development Committee

New chemicals under the Stockholm Convention on Persistent Organic Pollutants – final policy decisions

Proposal

- 1 This paper seeks Cabinet's agreement to amend, by Order in Council, Schedules 1AA and 2A of the Hazardous Substances and New Organisms Act 1996 (HSNO Act), and Schedule 1 of the Imports and Exports (Restrictions) Prohibition Order (No2) 2004 (Imports and Exports Order). These amendments are required to meet new international obligations under the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) which come into force on 3 December 2020.
- 2 This paper also seeks Cabinet's approval for a consequential amendment, by Order in Council, to Schedule 1 of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 (ACVM Regulations). This is not strictly required to comply with our international obligations, but ensures regulatory clarity and consistency for stakeholders.

Relation to government priorities

- 3 This is a routine operational adjustment that requires Cabinet approval. These changes must be made by 3 December 2020, on which date the new chemical listings will come into force for New Zealand.

Executive Summary

- 4 New Zealand is a Party to the Stockholm Convention. This means we are committed to eliminating and restricting persistent organic pollutants (POPs). POPs are toxic chemicals that are persistent in the environment, undergo long-range environmental transport, build up in human and animal tissue, and pass from species to species through the food chain.

5 In 2019, New Zealand and other Parties to the Stockholm Convention agreed to make two new chemicals subject to the Convention's restrictions:

- 5.1 dicofol (without specific exemptions), an organochlorine pesticide that was used to control mites on a range of crops and plants, which is not currently used in New Zealand
- 5.2 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds (with specific exemptions) that are used in a wide variety of applications

and consumer products, some of which may still be used in New Zealand such as fire-fighting foams and coated textiles.

- 6 New Zealand fulfils its obligations under the Stockholm Convention to eliminate or restrict the import, export, production, use, and disposal of chemicals listed in the Stockholm Convention through the HSNO Act and the Imports and Exports Order.
- 7 I propose to implement the new obligations by amending Schedules 1AA and 2A of the HSNO Act and Schedule 1 of the Imports and Exports Order.
- 8 I also propose to make a consequential amendment to Schedule 1 of the ACVM Regulations which lists substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds including certain chemicals that fall under the Stockholm Convention.
- 9 The effect of these recommendations will be that New Zealand will be compliant with the new Stockholm Convention obligations at the time they enter into force. To comply with the new obligations, these changes must come into effect in New Zealand by 3 December 2020.

Background

- 10 The Stockholm Convention commits governments to take measures to protect human health and the environment from the negative effects of POPs. The goal is to reduce and, where feasible, eliminate the production and environmental release of the chemicals listed under the Convention.
- 11 Annex A of the Stockholm Convention lists POPs that are to be eliminated. This means that we must eliminate production, use, import and exports of the POPs, except for those specific exemptions allowed by the Convention, and for which New Zealand has registered. The term of exemptions vary.
- 12 Decisions on the listing of new POPs under the Stockholm Convention are made by the Biennial Conference of the Parties. Agreement on the listing of dicofol (without specific exemptions), and PFOA, its salts and PFOA-related compounds (with specific exemptions) in Annex A of the Convention, in 2019, was by consensus.
- 13 Dicofol and PFOA, its salts and PFOA-related compounds are likely to lead to significant adverse human health and environmental effects, as a result of their long-range environmental transport.
- 14 Dicofol is an organochlorine pesticide that was used to control mites on a wide range of plants and crops. It was introduced commercially in 1955. Production declined sharply from 2007 and dicofol is no longer produced. A range of chemical and non-chemical alternatives to dicofol are available.
- 15 PFOA, its salts and PFOA-related compounds have been used in a wide variety of applications and consumer products, across many sectors, including fire-fighting foams and textiles. Globally, releases into the environment occur from past and ongoing production, use and disposal. The main emissions of

PFOA, its salts and PFOA-related compounds are to wastewater and as dust particles.

- 16 New Zealand fulfils its principal obligations under the Stockholm Convention through:
- the HSNO Act which prohibits (or in some cases imposes severe restrictions) on the import, manufacture, and use of POPs or a product containing a POP, in line with the requirements of the Stockholm Convention
 - the Imports and Exports Order, which prohibits the export of Stockholm Convention chemicals except to a Party that has an appropriate exemption or for the destruction of POP waste; both types of exports require a permit.
- 17 Chemicals listed in the Stockholm Convention, including POPs wastes and unused stocks of POPs, are subject to rules relating to collection, storage, and disposal that are specified in the Hazardous Substances (Storage and Disposal of Persistent Organic Pollutants) Notice 2004 (POPs Disposal Notice).
- 18 To give domestic effect to new chemical listings under the Stockholm Convention, Cabinet approval is required to amend Schedule 1AA (full text of the Convention) and Schedule 2A (list of the POPs, specific use exemptions, and New Zealand's notification of articles in use) of the HSNO Act, and to amend Schedule 1 of the Imports and Exports Order (list of POPs). This can be done by Order in Council.
- 19 While the Minister of Commerce and Consumer Affairs has responsibility for the Imports and Exports Order, as Minister for the Environment I have the authority to recommend policy changes on his behalf.
- 20 Schedule 1 of the ACVM Regulations lists substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds, including pesticides that fall under the Stockholm Convention. Updating Schedule 1 by adding dicofol is not strictly required to meet our international obligations, however it will ensure regulatory clarity and consistency for stakeholders. This amendment can also be done by Order in Council. Minister O'Connor holds the delegation for these regulations under his food safety portfolio, and he agrees that I can make this recommendation on his behalf.

Analysis

- 21 This amendment to the Stockholm Convention will enter into force for New Zealand on 3 December 2020 through a process known as 'tacit acceptance'. Through this process New Zealand will become bound automatically, unless we 'opt out'.

- 22 A Party may notify the Secretary-General of the United Nations (as depositary) of its non-acceptance of the listing before this date. Prior to the 2019 Conference of the Parties, the New Zealand delegation received approval from the Minister of Foreign Affairs to support the proposed listings.

Dicofol

- 23 I propose that dicofol is listed in Schedule 2A of the HSNO Act and in Schedule 1 of the Imports and Exports Order. This means that its import, export, use and manufacturing will be prohibited in New Zealand.
- 24 The costs to New Zealand of adopting the listing of dicofol are considered to be negligible because:
- 24.1 it can only be used for laboratory research and development, or as an ingredient or component in the manufacture of another substance or product under the HSNO Act, and there is no evidence that dicofol is being imported for research and development purposes or that any product is being used for any other use
- 24.2 no pesticide product containing dicofol is registered for use in New Zealand under the ACVM Act
- 24.3 dicofol is no longer produced globally, and its supply will decline as other countries eliminate it and implement their obligations under the Stockholm Convention.

PFOA, its salts and PFOA-related compounds

- 25 The benefits to New Zealand in listing PFOA, its salts and PFOA-related compounds (with exemptions) include:
- reducing use to a minimum and, in time, preventing all use in New Zealand, will reduce the exposure of New Zealanders and our environment to these chemicals
 - this will also ensure that there will be no or only negligible amounts of it in our primary products exports
 - we will continue to demonstrate New Zealand's commitment to the Stockholm Convention and the elimination of POPs, as well as comply with best practices.
- 26 Globally, the supply of products containing PFOA, its salts and PFOA-related compounds will decline as other countries also eliminate its use and implement their obligations under the Stockholm Convention. Officials advise me that switching to alternatives in new products will not likely be significant, as these are becoming available at reasonable cost.
- 27 The EPA has not issued approvals to import or manufacture PFOA, its salts and PFOA-related compounds under the HSNO Act. However, they may be

imported as component chemicals in products under an appropriate group standard.

- 28 The Fire Fighting Chemicals Group Standard 2017 (originally issued in 2006) states that PFOA (but not its salts or PFOA-related compounds) is excluded from the group standard. This means that PFOA itself was not approved for use in fire-fighting foams from 2006 in New Zealand, but other PFOA-related compounds were able to be used. PFOA-based fire-fighting foams are still in use in New Zealand, and replacing these will take some time.
- 29 The EPA is currently reviewing the Fire Fighting Chemicals Group Standard 2017. The review of the group standard proposes that all per- and poly-fluoroalkyl (PFAS) containing fire-fighting foams be phased out, under the same conditions and to the same timeline as provided in the Stockholm Convention listing for PFOA-based fire-fighting foams. PFOA is a sub-group of chemicals under the PFAS family (not all PFAS chemicals are POPs).
- 30 The Stockholm Convention listing for PFOA, its salts and PFOA-related compounds contains a list of nine specific use exemptions for which Parties can register under Article 4 of the Convention. These exemptions are for a limited period of time for essential ongoing uses for which alternatives are not yet technically feasible or available, or to allow a transition period. The Stockholm Convention maintains a register of the Parties that decide to use these specific exemptions.
- 31 Officials have advised me that New Zealand will need to register for two of these listed exemptions:
- photographic coatings applied to films
 - fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems.
- 32 Industry views received during public consultation support these exemptions.
- 33 The submission on photographic coatings applied to films indicated that these are specialist medical imaging films, and an exemption would be required to enable transition to alternatives. The five-year exemption provides for this.
- 34 Consultation by the EPA on amendments to the Fire Fighting Chemicals Group Standard 2017 in late 2019, and through the EPA's investigation into use of older, non-compliant PFAS fire-fighting foams in 2018, found that the replacement of fire-fighting foams containing PFOA-related compounds will take some time to achieve. There is a significant amount of this still in use, however, in five years' time the foams will be at or near their use-by date, and will need replacing. The five-year exemption provides for this, and is therefore recommended to avoid unnecessary cost and provide enough time.

- 35 Other than PFOA-related compounds in older fire-fighting foams, the current use of these chemicals in New Zealand is thought to be negligible, but there may be existing 'articles in use' that contain PFOA-related compounds.
- 36 Separately, a Party can notify the Secretariat to the Stockholm Convention that it continues to have 'articles in use', which do not need to be immediately disposed of. This relates to types of articles containing POPs that were already in use in a country before the new listings came into force. The 'articles in use' notification covers existing articles for the time they remain in use. It does not extend to allow reusing or recycling of the article.
- 37 Examples of 'articles in use' include coated textiles such as carpets, outdoor textiles and apparel, medical garments and vehicle upholstery. PFOA-related compounds can also be contained as low level contaminants in some older products manufactured using fluoropolymers and fluoroelastomers. Fluoropolymers and fluoroelastomers are used in a wide range of applications across many sectors such as automotive, electronics, construction, and aerospace. Overall levels of PFOA or PFOA-related compounds in 'articles in use' is small.
- 38 Officials have advised me that an 'articles in use' notification needs to be made for PFOA, its salts and PFOA-related compounds. This will allow continued use of these products. They cannot be recycled, but they can be replaced by something else (that is not regulated as a POP).
- 39 Any 'articles in use' containing PFOA, its salts and PFOA-related compounds must be managed and disposed of appropriately, as per the Hazardous Substances (Storage and Disposal of Persistent Organic Pollutants) Notice 2004. This Notice is currently under review by the EPA, and will result in updated guidance to assist people to comply with the disposal requirements.
- 40 I therefore propose that:
- PFOA, its salts and PFOA-related compounds and its permitted uses are listed in Schedule 2A of the HSNO Act and in Schedule 1 of the Imports and Exports Order. This means that their import, export, use and manufacturing will be prohibited in New Zealand (excluding the following proposed exemptions)
 - New Zealand register for the specific use exemptions for photographic coatings applied to films, and for fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems. This means their use will no longer be allowed after 3 December 2025
 - New Zealand notify the Secretariat that there are 'articles in use' in New Zealand, to allow the continued use of existing articles that contain these substances which were already in use before 3 December 2020.

Other minor amendments

- 41 The HSNO Act Schedule 1AA contains the full text of the Stockholm Convention, including its annexes. I therefore recommend that Schedule 1AA be updated to reflect the new listings under Annex A of the Convention, as covered above. The updating of Schedule 1AA will also reflect a decision by the Parties to amend the listing for perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride in Annex B of the Convention. This last decision does not require amending Schedule 2A of the HSNO Act.
- 42 I also recommend that dicofol is added to Schedule 1 of the ACVM Regulations to ensure regulatory clarity and consistency for stakeholders.

Parliamentary Treaty Examination

- 43 Standing Order 397, which governs presentation of treaties to the House of Representatives, applies only to positive treaty actions and not to treaty actions subject to tacit acceptance, like the Stockholm Convention. The Government has committed as a matter of policy to present amendments which are more than minor and/or technical, to the relevant Committee. We consider this amendment to be minor and technical, due to dicofol not being used in New Zealand, and relevant exemptions for use being available for PFOA, its salts and PFOA-related compounds.

Financial Implications

- 44 There are no direct fiscal implications to the Crown from the proposals in this paper.
- 45 There are no direct impacts on New Zealand. Dicofol is not used in New Zealand. Two current uses for PFOA, its salts and PFOA-related compounds in New Zealand can continue until 3 December 2025. New Zealand is proposing to register for specific use exemptions for these. The five-year exemption will assist with the replacement of PFOA-related fire-fighting foams as these products reach their 'use by' date and would need replacing anyway. Permits under the Imports and Exports Order do not currently have a fee for applicants.

Legislative Implications

- 46 The changes to the HSNO Act, the Imports and Exports Order, and the ACVM Regulations can be made by Order in Council. These changes must come into force by 3 December 2020, to ensure that New Zealand is compliant with our international obligations.

Impact Analysis

Regulatory Impact Statement

- 47 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Assessment on the basis that it is essential (the minimum

necessary) to comply with international obligations that are binding on New Zealand.

Human Rights

48 There are no human rights implications in this proposal and there are no inconsistencies between the proposal and the Human Rights Act 1993.

Consultation

49 Under section 141 of the HSNO Act, I was required to request the Environmental Protection Authority (EPA) to undertake consultation on the proposed amendments to the HSNO Act. Cabinet approval to consult was not required. Amendments to the Imports and Exports Order do not require statutory consultation.

50 The EPA undertook public consultation from 28 February to 29 March 2020 on the proposed amendments, and reported the summary of submissions and its recommendations to me on 28 April 2020. Five submissions were received on the proposals, which either supported or did not oppose the proposed changes.

51 The EPA also took into account feedback received through its consultation in late 2019 on amendments to the Fire Fighting Chemicals Group Standard 2017 to inform its recommendations on the listing of PFOA, its salts and PFOA-related compounds. This consultation proposed that all PFAS containing fire-fighting foams be phased out, under the same conditions and to the same timeline as provided in the Stockholm Convention listing for PFOA-based fire-fighting foams.

52 s 9(2)(h)

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53 s 9(2)(h)

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Proactively released under the Official Information Act 1982

54 The Environmental Protection Authority, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Health, the Ministry for Primary Industries, and New Zealand Customs have been consulted on the proposals outlined in this paper and agree with the recommended approach. The Treasury and the Department of Prime Minister and Cabinet have been informed.

Communications

55 No publicity is planned as the proposal has a low public interest. The EPA will communicate the new requirements by putting them on their website, and using its regular communication channels with industry.

Proactive Release

56 Consideration of proactive release of this paper will be delayed to coincide with consideration of proactive release for a subsequent and related Cabinet paper for the Cabinet Legislation Committee that is intended to be lodged following this paper. The proactive release of both papers can then be considered at the same time. Any release is subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister for the Environment, in concurrence with the Minister of Commerce and Consumer Affairs and the Minister for Food Safety as relevant, recommends that the Committee:

- 1 note that Parties to the Stockholm Convention on Persistent Organic Pollutants agreed to list dicofol without specific exemptions and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds with specific exemptions in Annex A (Elimination) of the Convention which will enter into force on 3 December 2020 for all Parties to the Convention who have not opted out
- 2 note that New Zealand will become bound by the amendments to the Stockholm Convention on Persistent Organic Pollutants on 3 December 2020 if we do not opt out before this date
- 3 note that implementing the amendments to the Stockholm Convention on Persistent Organic Pollutants reflect New Zealand's interests, and that accordingly New Zealand will not opt out
- 4 note that as the amendments will enter into force through a process of tacit acceptance, the amendments are not subject to the Parliamentary Treaty Examination process and will not be presented to Parliament
- 5 note that although not required to comply with international obligations, minor changes to the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 are beneficial to ensure regulatory clarity and consistency for stakeholders

- 6 agree to amend Schedule 2A of the Hazardous Substances and New Organisms Act 1996 and Schedule 1 of the Imports and Exports (Restrictions) Prohibitions Order (No2) 2004 by adding dicofol without specific exemptions and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds with specific exemptions
- 7 agree to amend Schedule 1AA of the Hazardous Substances and New Organisms Act 1996 by updating the text of the Stockholm Convention on Persistent Organic Pollutants
- 8 agree to amend Schedule 1 of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 by adding dicofol
- 9 agree that New Zealand will register the following specific exemptions for use with the Secretariat of the Stockholm Convention on Persistent Organic Pollutants in accordance with the provisions of Part X of Annex A of the Stockholm Convention:
 - 9.1 photographic coatings applied to films
 - 9.2 fire-fighting foam for liquid fuel vapour suppression and liquid fuel fires (Class B fires) in installed systems, including both mobile and fixed systems
- 10 agree that New Zealand will make an 'articles in use' notification for any products containing perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds already in use in New Zealand at the time of the listing coming into force, to the Secretariat of the Stockholm Convention on Persistent Organic Pollutants
- 11 invite the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals.

Authorised for lodgement

Hon David Parker

Minister for the Environment