

Office of the Minister for the Environment

Chair

Cabinet Legislation Committee

Pest Control - Minor Amendment to Resource Management (Exemption) Regulations 2017

Proposal

1. This paper proposes that the Cabinet Legislation Committee authorise submission to the Executive Council of the *Resource Management (Exemption) Amendment Regulations 2017*. These Amendment Regulations correct a drafting issue in the recently-passed Regulations to ensure that their policy intent is achieved by enabling aerial brodifacoum operations within predator-proof sanctuaries.

Background

2. The Resource Management (Exemption) Regulations 2017 (the Original Regulations) came into force on 1 April 2017 and exempt pest control operations discharging 1080, brodifacoum, and rotenone from regional council controls under the Resource Management Act 1991 (RMA). These controls were found not to add any useful regulation beyond the Hazardous Substances and New Organisms Act 1996 (and the Agricultural Compounds and Veterinary Medicines Act 1997).
3. A drafting issue in regulation 5(b)(i) has resulted in the brodifacoum exemption applying when “the discharge is into or onto... land protected by predator-proof fencing”. There is a risk that a strict interpretation of “land” would mean that an aerial brodifacoum operation in a sanctuary which incidentally discharged to water may not be covered by the original Regulations.
4. The policy intent of the original Regulations was to enable aerial brodifacoum operations within a sanctuary. The risks from brodifacoum discharged to water within sanctuaries are already effectively regulated by the Code of Practice under the Agricultural Compounds and Veterinary Medicines Act (Aerial and Hand Broadcast Application of Pestoff® Rodent Bait 20R for the Intended Eradication of Rodents from Specified Areas of New Zealand), which prevents bait getting outside the sanctuary during and after the operation. Controls on brodifacoum under the Hazardous Substances and New Organisms Act also manage risks from aerial operations flying over water bodies.
5. Brodifacoum is discharged aurally within sanctuaries for initial eradication of rodents once the fenced perimeter is secure. These aerial operations inevitably result in discharge to water bodies within a sanctuary.
6. This drafting issue affects new sanctuaries which have not yet undertaken an initial aerial eradication operation. The drafting issue will not affect existing sanctuaries, nine of which (including Zealandia, Maungatautari, and Rotokare) have already undertaken initial eradication operations using brodifacoum.

7. One affected sanctuary is Brook Waimarama Sanctuary, which is planning an initial eradication operation using aerial brodifacoum for winter 2017. Brook Waimarama is aware of the drafting issue. The original Regulations could be amended in sufficient time for Brook Waimarama to conduct its operation this winter.

Policy

8. The policy approved by Cabinet intended to exempt all discharges of brodifacoum within a predator-proof sanctuary, thus a proposed amendment to correct the drafting issue can be directly considered by Cabinet Legislation Committee.
9. The Amendment Regulations correct the drafting issue in the original Regulations by specifying that brodifacoum discharge is enabled in all area (including land, water, and air) protected by predator-proof fencing.

Timing and 28-day rule

10. The Order is proposed to be notified in the Gazette on 1 June 2017 and come into force on 29 June 2017, following usual procedures including the 28-day rule.

Compliance

11. The proposed amendments comply with the:
 - a. principles of the Treaty of Waitangi
 - b. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - c. principles and guidelines set out in the Privacy Act 1993
 - d. relevant international standards and obligations
 - e. LAC Guidelines on the Process and Content of Legislation.

Regulations Review Committee

12. I do not consider there are any grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Council

13. The Amendment Regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Regulatory Impact Analysis

14. A Regulatory Impact Statement was prepared and submitted at the time that Cabinet approval was sought for the policy decisions. The policy has not changed.

Publicity

15. No press release will be issued by the Minister for the Environment upon gazettal as this is a minor amendment.
16. There may be reaction from community groups who oppose aerial pest control operations.

17. The Ministry for the Environment webpage will be updated with an explanation of the amendment, including an explanation of how risks from aerial brodifacoum operations are managed by the Agricultural Compounds and Veterinary Medicines Act and Hazardous Substances and New Organisms Act.
18. I propose that this paper is proactively released at the same time as the Amendment Regulations are gazetted, to enable any concerned persons to ascertain the intention of the amendment.

Consultation

19. This paper was prepared by Ministry for the Environment. The Ministry for Primary Industries, Department of Conservation, Environmental Protection Agency, the Ministry of Health, the Department of Internal Affairs, Land Information New Zealand, and Treasury were consulted during the preparation of this paper.
20. The Department of Prime Minister & Cabinet was informed of this paper.

Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that the *Resource Management (Exemption) Amendment Regulations 2017* give effect to the decisions referred to in EGI-16-MIN-0211;
2. **authorise** the submission of the *Resource Management (Exemption) Amendment Regulations 2017* to the Executive Council; and
3. **authorise** the proactive public release of this paper at the time the Amendment Regulations are promulgated.

Authorised for lodgement.

Hon Dr Nick Smith
Minister for the Environment