



## Denewing under the HSNO Act - Request for the EPA to initiate consultation

Date Submitted:	30/9/2021	Tracking #: BRF-610	
Security Level	Policy and Privacy In-Confidence	MfE Priority:	Not Urgent

	Action sought:	Response by:
Hon David Parker, Minister for the Environment	Request that the EPA publicly consult on whether the organisms listed in Appendix 1 should be "denewed" under the HSNO Act	7/10/2021
Hon Phil Twyford, Associate Minister for the Environment	Note that following a request by the Minister for the Environment the EPA will consult on whether the organisms listed in Appendix 1 should be "denewed" under the HSNO Act	

Actions for Minister's Office Staff	Return the signed report to MfE. Subject to the Minister's approval, send the signed letter to the EPA.
Number of appendices and attachments 1	Titles of appendices and attachments: 1. Appendix 1: Letter to the EPA and attached table of proposed candidate organisms

### Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Andy Morgan	027 328 9032	✓
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Director	Glenn Wigley	027 491 7806	

# Denewing under the HSNO Act - Request for the EPA to initiate consultation

## Key Messages

1. The purpose of this briefing is to advise you of the process for removing the “new organism” classification from certain organisms under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) – a process referred to as “denewing”.<sup>1</sup> In addition, this briefing recommends that you (Minister Parker) request the Environmental Protection Authority (EPA) to initiate public consultation on seven organisms identified as potential candidates to be denewed. A letter to the EPA is attached for you to sign if you agree with this recommendation (Appendix 1).
2. If an organism belongs to a species which was not present in New Zealand before 29 July 1998 (when the new organism part of the HSNO Act came into effect), it falls within the HSNO Act definition of a new organism.<sup>2</sup> The HSNO Act contains a regulatory mechanism under section 140(1)(c) which allows new organisms to be declared “not new” by Order in Council, based on your recommendation to this effect.
3. This denewing process is important because some organisms will spread naturally or inadvertently to New Zealand (or, may have been present prior to 29 July 1998 but unidentified at that time), and the HSNO Act may no longer be the most appropriate or effective mechanism to control or manage these organisms.
4. In April 2021, the EPA called for expressions of interest asking people to provide details of any organisms classed as new under the HSNO Act that should in their view be denewed. Through this pre-consultation, the EPA received 51 proposals from 12 applicants. Out of these 51 proposals, seven organisms met the requirements to be considered as potential candidates to be denewed. These being:
  - the Pepino Mosaic Virus
  - the bug *Dicyphus n. sp.*
  - the beetle *Paropsisterna cloelia*
  - the plant *Pilea peperomioides*
  - the plant *Philodendron pedatum*
  - the plant *Philodendron squamiferum*
  - the bacterium *Paenibacillus alvei*
5. The next step, if you agree, is for the EPA to publicly consult on its proposed list of seven organisms to be denewed. After this consultation has been undertaken by the EPA and the submissions received analysed, the EPA will report back to you on the consultation. Ministry for the Environment officials would then advise you on the next stage of the

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<sup>1</sup> The term “denewing” is not in the HSNO Act but is how officials and industry refer to the process.

<sup>2</sup> Section 2A(1)(a) of the Hazardous Substances and New Organisms Act 1996.

process and provide you with a draft Cabinet paper recommending which, if any, organisms should be denuded.

## Recommendations

We recommend that you:

- a. **Note** that, under the Hazardous Substances and New Organisms Act 1996 (HSNO Act), you may recommend the making of an Order in Council which prescribes that certain organisms are not new organisms for the purpose of the HSNO Act
- b. **Note** that, before making this recommendation, you must request the Environmental Protection Authority (EPA) to consult in accordance with section 141(1) of the HSNO Act
- c. **Request** that the EPA consult on whether to remove the “new organism” classification from the seven organisms listed in the letter attached as Appendix 1  
Yes/No
- d. **Sign** the attached letter to the EPA requesting that this consultation occur  
Yes/No
- e. **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment’s website within the next eight weeks  
Yes/No

## Signature

Glenn Wigley Director - Policy and Regulatory Waste and Resource Efficiency  Date	
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Hon David Parker Minister for the Environment  Date	
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## Purpose

1. The purpose of this briefing is to advise you of the process for removing the “new organism” classification from certain organisms under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) – a process referred to as “denewing”. In addition, this briefing recommends that you request the Environmental Protection Authority (EPA) to initiate public consultation on the seven organisms listed in Appendix 1.

## Context

2. In regards to new organisms, under the HSNO Act a person must obtain approval from the EPA before importing, developing, field-testing, or releasing a new organism. These approvals are intended to protect the environment and the New Zealand public from any risks posed by new organisms.
3. If an organism belongs to a species which was not present in New Zealand before 29 July 1998 (when the new organism part of the HSNO Act came into effect), it falls within the HSNO Act definition of a new organism.<sup>3</sup> Some organisms that are classed as new under the HSNO Act’s definition are nevertheless already present in self-sustaining populations in New Zealand. Some may have arrived in the country naturally or inadvertently since 29 July 1998, and others were likely present here before then, but were not identified.
4. While some of these organisms may pose a risk, others do not and as such no organisation is trying to eradicate their populations. The HSNO Act contains a regulatory mechanism (denewing) under section 140(1)(c) which allows new organisms to be declared “not new” by Order in Council, based on your recommendation to this effect.
5. Denewing removes the need for researchers and other people working with certain organisms to seek EPA approval, by reclassifying these organisms as “not new”. Furthermore, denewing organisms which are already present in New Zealand and not being actively eradicated or otherwise managed enables the EPA to focus on higher risk organisms.
6. In April 2021, the EPA called for expressions of interest asking people to provide details of any organisms classed as new under the HSNO Act that should in their view be denewed. Through this pre-consultation, the EPA received 51 proposals from 12 applicants. Out of these 51 proposals, seven organisms met the requirements to be considered as potential candidate organisms to be denewed. These being:
  - the Pepino Mosaic Virus
  - the bug *Dicyphus n. sp.*
  - the beetle *Paropsisterna cloelia*
  - the plant *Pilea peperomioides*
  - the plant *Philodendron pedatum*
  - the plant *Philodendron squamiferum*
  - the bacterium *Paenibacillus alvei*

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<sup>3</sup> Section 2A(1)(a) of the Hazardous Substances and New Organisms Act 1996.

7. The proposals withdrawn included:
  - 23 organisms with uncertainty around their current status. Applications for denewment can only be considered for organisms that are new. This is a key precursor requirement and is part of what the EPA checks following expressions of interest. If there is uncertainty around whether the organism is new or not new, then this uncertainty would need to be resolved prior to the organism being considered for denewment
  - Eight proposed candidates that have been observed in New Zealand before 29 July 1998 and therefore would require a formal determination to confirm their status as new in New Zealand
  - Four proposed candidates found outside the geographical area covered by the HSNO Act (ie, found in New Zealand's Exclusive Economic Zone)
  - Five proposed candidates that have never been isolated or have not yet been formally recognised as present in New Zealand
  - Four proposed candidates that are already recognised as not new organisms.
8. The seven organisms that the EPA has proposed as potential candidates to be denewed are included in a table in Appendix 1. Information in this table includes the:
  - Organism (type)
  - Applicant (organisation)
  - When the organism was first recorded in New Zealand
  - Whether the organism has formed a self-sustaining population in New Zealand
  - Whether any organisation is attempting to control it
  - Any reasons as to why it should be denewed.

## Denewing process

9. Before a recommendation can be made by you to declare organisms "not new" by Order in Council, there are several procedural requirements that must be fulfilled. The procedure for making an Order in Council for the purpose of removing a new organism classification is set out in section 141 of the HSNO Act.
10. Subsections 141(1)(a)(i) and (ii) of the HSNO Act state that before you recommend the making of such an Order in Council, you shall request the EPA to consult publicly on the proposed candidate organisms to be denewed.<sup>4</sup> Our recommendation is for this process to move forward to public consultation on the seven proposed candidate organisms.
11. As per Section 141(1)(a)(iii) of the HSNO Act, after this consultation has been undertaken by the EPA, the EPA will report back to you on the consultation and the submissions received. Officials from the Ministry for the Environment (the Ministry) would then advise you on the next stage of the process and provide you with a draft Cabinet paper recommending which, if any, organisms should be denewed.

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<sup>4</sup> Section 141(1)(a)(i) and (ii): "request the Authority to do everything reasonably practicable on its part to advise all persons, who or which in its opinion may be affected by any Order in Council made in accordance with the recommendation, of the proposed terms of the Order in Council, and give such persons a reasonable opportunity to make submissions on them to the Authority".

12. Under section 140(2) of the HSNO Act, denewing regulations can only be made if you, as Minister for the Environment, have considered:
  - a. whether the organism in question has formed a self-sustaining population in New Zealand (that is, a population that can replenish itself without human intervention); and
  - b. whether any person is attempting to manage, control or eradicate the organism under any Act.

## Consultation

13. The EPA has been consulted in preparation of this briefing. As noted above, the EPA has engaged in a pre-consultation call for expressions of interest which provided the information to compile the list of proposed organisms to denew.

## Risks and mitigations

14. Ministry officials consider there to be a low risk associated with the EPA going ahead with consultation on the seven proposed candidate organisms. The specified organisms are already established in New Zealand. It is likely that these organisms will continue to spread until they reach their natural population size and distribution, given that no organisation is trying to eliminate these populations.
15. While denewing these organisms may result in their further release and accelerate their populations' spread, the consultation phase of the denewing process will highlight whether their change of status will pose any risks to the environment, the public or the economy. In addition, while denewing means that an organism is no longer subject to the HSNO Act, it can still be controlled under the Biosecurity Act 1993. Whether to proceed with the denewing process is a further decision that you will make following the consultation and analysis of the submissions received.
16. Additionally, there are risks if denewing is not done. The seven organisms would remain regulated by the HSNO Act meaning that researchers and others would not be able to work with them unless granted an individual HSNO Act approval by the EPA.
17. Denewing a tranche of organisms through this process is the most efficient way to remove organisms from the scope of the HSNO Act. Not denewing could mean efficiency costs to the EPA, through having to process individual applications regarding the organisms that would otherwise have been denewed.

## Legal issues

18. There are no legal risks associated with this proposal to consult on denewing the seven proposed candidate organisms.

## Financial, regulatory and legislative implications

19. Following consultation, the Ministry would provide draft regulations for you to consider submitting to Cabinet to recommend which, if any, organisms to denew. The EPA will meet the cost of consultation from within its existing budget. If any of the proposed organisms are denewed, this would likely decrease the costs to researchers working with these organisms. There would be reduced revenue to the EPA from applications, but this would be offset by reduced costs to the EPA in considering these applications.

## Next Steps

20. If you agree with our recommendation that this process should move forward, the next step is for you to request that the EPA formally consult on denewing the seven proposed candidate organisms, listed in Appendix 1. A letter to the EPA requesting this has been prepared for you to sign (Appendix 1).

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## Appendix 1: Letter to the EPA and attached table of proposed candidate organisms

Julie Hardaker  
Chairperson  
Environmental Protection Authority  
Private Bag 64002  
WELLINGTON

Dear Julie Hardaker

The Ministry for the Environment has recommended that I commence the statutory process to prescribe organisms as “not new” in regulations under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).

Following an initial call for expressions of interest, the Environmental Protection Authority (EPA) has provided the Ministry for the Environment with the seven organisms listed below as potential candidates to be “denewed”:

- the Pepino Mosaic Virus
- the bug *Dicyphus n. sp.*
- the beetle *Paropsisterna cloelia*
- the plant *Pilea peperomioides*
- the plant *Philodendron pedatum*
- the plant *Philodendron squamiferum*
- the bacterium *Paenibacillus alvei*

Before recommending that such regulations be made, section 140(2) of the HSNO Act requires that I consider, (i) whether the organism has formed a self-sustaining population in New Zealand; and (ii) whether any person is attempting to manage, control, or eradicate the organism under any Act.

Therefore, I request that the EPA undertake the following in accordance with section 141(1) of the HSNO Act:

- a. do everything reasonably practicable on its part to advise all persons who the EPA considers may be affected by the proposal of its proposed terms,
- b. give those people a reasonable opportunity to make submissions on them to the EPA,
- c. advise me of any submissions received, and any comments the EPA wishes to make on the submissions or the proposal, and
- d. advise me on the best international practices and standards for the safe management of hazardous substances and new organisms.

I would be grateful if the EPA could complete the statutory process no later than 60 working days after submissions open.

Yours sincerely

Hon David Parker  
Minister for the Environment

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Organism (type)	Applicant (organisation)	First recorded in NZ	Has it formed a self-sustaining population?	Is any person attempting to control it?	Reason to renew	Background information
Pepino Mosaic Virus (virus)	Bioforce	April 2021	Only been recently found in tomatoes culture in April 2021.	<p>In the last 2 months, MPI tried to contain the virus to the first glasshouse the virus was detected in.</p> <p>MPI has decided that the virus has established in NZ and an eradication attempt was not cost effective.</p> <p>MPI and Industry are working up Long Term Management options. There are no official controls on infected properties, although the organism is still classified as an Unwanted and Notifiable organism under the Biosecurity Act.</p>	<p>To use the strain which has recently arrived in New Zealand as an immunisation for tomato crops.</p> <p>MPI cannot confirm that the commercial mild CH2 strain to be imported is similar enough to the CH2 strain identified in NZ (PepMV-AK1) to confer protection.</p> <p>MPI noted that denewing could mitigate the impact of ongoing infection of PepMV-AK1 but could also spread PepMV-AK1 and imported CH2 strain to remaining tomato greenhouse as well as other susceptible commercial and wild hosts. Furthermore, the mild strain could mutate to aggressive strains in the right conditions.</p>	The virus is well established in many other parts of the world, especially in Europe and North America. It is principally mechanically transmitted by farmworkers and their tools and is relatively stable outside of its host. It is an RNA virus that can be classified into 5 strains all of which have mild and aggressive variants. It can mutate quickly changing the symptoms it causes.
<i>Dicyphus</i> n. sp. (deposited in the Plant Health & Environment Laboratory, Auckland, New Zealand. Voucher code: T13_03508). (bug)	Bioforce	2013	The bug was sighted 48 times between 2013 and 2018 in the Auckland region by Stephen Thorpe, a freelance entomologist, confirming the presence of a self-sustained population.	Not on the Unwanted organism Register.	To study its biology and identify available options to manage it (potential BCA or pest).	The species was proposed to be renewed in 2016 but was cut off the list accidentally. It was re-submitted in 2018 but this denewing round was cancelled due to the lack of candidates. The study of this organism can be done without restriction on specimens isolated here as long as they are not classified as unwanted by MPI.
<i>Paropsisterna cloelia</i> (Stål, 1860) (beetle)	Scion	2016	Yes (spread in five years from Blenheim to Gisborne).	MPI Surveillance & Incursion Investigation Team stood down the response in 2017 when the second season of monitoring showed it had spread throughout the wider Hawkes Bay.	To undertake research freely on this pest in the field and the laboratory.	

Organism (type)	Applicant (organisation)	First recorded in NZ	Has it formed a self-sustaining population?	Is any person attempting to control it?	Reason to renew	Background information
<i>Pilea peperomioides</i> Diels (1912)  (plant)	NZ Plant Producers	Not clear, but no evidence pre-1998	MPI received many notifications over the past few years (see Surveillance Quarterly).	In 2019, MPI investigated the sale of the plant on TradeMe which resulted in the seizure of 49 plants, which were destroyed.	A benefit of making this organism 'not new' is for New Zealand consumers, so they can legally buy healthy, well-priced plants from reputable retail outlets, rather than resorting to buying illegally traded plants on social media platforms.	The species was determined to be a new organism in 2020. Despite MPI effort to control it, the plant (commonly known as a Chinese money plant) can be purchased on TradeMe from various sellers around the country.  DOC is strongly opposed to post-hoc legalisation of past criminal activity, as it encourages the same process in future (illicit introduction and establishment to by-pass proper procedure).
<i>Philodendron pedatum</i> (Hook.) Kunth (1841)  (plant)	MPI	No specific date	Ornamental species, not known to have formed a self-sustaining population.	Incursion investigation by MPI in 2020 is now closed as no biosecurity risk was identified and further investigations are unlikely.	To remove the biosecurity risks associated with the illegal importation and allow the development of an Import Health Standard for this organism under the Biosecurity Act 1993.	Species were determined to be new in 2020 to support an MPI compliance action.  Readily available for sale and distribution within New Zealand by boutique retailers and private individuals despite being a new organism.  DOC states that denewing these species would encourage illegal activity and could create a precedent for other species.
<i>Philodendron squamiferum</i> Poepp. (1845)  (plant)						
<i>Paenibacillus alvei</i> (Cheshire & Cheyne, 1885) Ash et al., 1994  (bacterium)	MPI	2008	Isolated in 2008 from dead bumblebee and in 2010 from 2 soil samples. Considered to have a ubiquitous distribution.	No	Remove the uncertainty created by the requirements of the HSNO Act around the development of a new import health standard for bee products.	Determined to be new in 2007 (MAF was the applicant). Despite its ubiquitous distribution (cheese, fermented tomatoes, healthy beehives, honeybee guts, honey and soil) the Decision-Making Committee considered that a 1980 sample was not a valid record due to the absence of publication, the lack of knowledge around the method used to identify it and the probability of having been contaminated before the analysis.