



Environmental
Protection Authority
Te Mana Rauhi Taiao

Briefing to the Incoming Minister

Briefing on the Environmental Protection Authority

DECEMBER 2011



Introduction

This briefing provides an overview of the Environmental Protection Authority (EPA) and the major issues it is facing over the next few months.

The briefing is in three parts. Part 1 provides an overview of key information relating to the organisation and your key responsibilities in relation to the EPA. Part 2 outlines policy and implementation issues, and Part 3 sets out pending decisions or actions that may require your attention.

Part 1 - Organisation and Responsibility

Establishment

The Environmental Protection Authority was established on 1 July 2011 under the Environmental Protection Authority Act 2011 as a Crown Agent. The EPA undertakes functions under the EPA Act and environmental Acts in a way that *“contributes to the efficient, effective, and transparent management of New Zealand’s environment and natural and physical resources; and enables New Zealand to meet its international obligations.”*

Functions

The EPA undertakes particular functions under the following environmental Acts:

- Climate Change Response Act 2002 – administration of Emissions Trading Scheme
- Hazardous Substances and New Organisms Act 1996 - implementation
- Imports and Exports (Restrictions) Act 1988 and Prohibition Order (No.2) 2004 – implementation
- Ozone Layer Protection Act and Regulations 1996 – permitting and exemptions
- Resource Management Act 1991 - Nationally Significant Proposals.

The Exclusive Economic Zone and Continental Shelf (Environment Effects) Bill (“the EEZ Bill”), referred to the Local Government and Environment Committee for consideration, identifies the EPA as the processing and decision making body for activities beyond 12 nautical miles from the coast.

Governance and decision making

The EPA is governed by an EPA Board (the Board) appointed by you. The Board currently has eight members: Kerry Prendergast (Chair), Richard Woods (Deputy Chair), David Faulkner, Anake Goodall, Tim Lusk, Graham Pinnell, Taria Tahana, and Gillian Wratt. The Board must have collective knowledge of, and experience in, matters relevant to the functions of the EPA. You may appoint no fewer than six and no more than eight persons as members of the Board, with at least one member who has knowledge and experience

relating to the Treaty of Waitangi and tikanga Maori. The term of Richard Woods, the Deputy Chair of the EPA Board, expires in June 2012. You will need to appoint a new Board member to replace him.

The EPA Act established Ngā Kaihautū Tikanga Taiao (Ngā Kaihautū) as a Māori Advisory Committee to the Board to provide advice and assistance to the EPA from a Māori perspective on policy, process and decisions of the EPA. Up to eight members are appointed by the EPA Board and operate within a Terms of Reference set by the Board.

The EPA Board also appointed a HSNO Committee under the Crown Entities Act 2004. This Committee currently consists of seven members (of a possible eight) and is chaired by the Deputy Chair of the EPA Board, Richard Woods. The Committee hears and decides applications made under the HSNO Act, except for some decisions which are non-notified or required to be made rapidly (less than 10 days). The Board delegates rapid decision-making powers to various third parties, including the Chief Executive of the EPA. The Board can review and remove these delegations if it has any cause for concern. You are responsible for approving the appointment of members to this Committee. The terms of Mr Woods and two other members of the Committee expire in June 2012. The EPA is in the process of identifying replacement HSNO Committee members, which will require your approval sometime in the New Year.

Under the RMA, you have responsibility for deciding whether a matter is of national significance and deciding whether to use any of the ministerial powers of intervention, which include the power to call in proposals of national significance and referring such proposals to a Board of Inquiry or the Environment Court for decision. When a matter has been directed to a Board of Inquiry, you appoint either an Environment Court Judge or retired High Court Judge as chair to produce a final decision and report within a nine calendar month period. You are the only person with the ability to grant a time extension.

Organisational Structure

The organisation established to support the Board has a staff of approximately 160. An organisational chart is attached as Appendix 1.

In October 2011 the EPA Chief Executive commenced a project to examine the structure of the EPA to ensure that it was well placed to deliver its functions into the future. Staff are currently being consulted on a proposed new structure.

Statement of Intent

The EPA Statement of Intent is also provided to outline additional detail on the EPA and its responsibilities.

Part 2 - Major Policy and Implementation Issues

Hazardous Substances and New Organisms Act 1996

Genetically modified organisms

The EPA's role in considering whether to approve new organisms in New Zealand includes the assessment of genetically modified organisms (GMOs). These applications are often controversial, have high public interest and have the potential for litigation.

New Zealand has one of the strictest regulatory regimes in the world for GMOs and to date there have been no unconditional releases of any GMOs in this country. All GMOs currently approved are in contained research facilities including two active field test/outdoor developments of GMOs. There has been one approval to conditionally release a genetically modified animal vaccine for the treatment of equine influenza (horse flu) but its use has not been required to date.

Reassessments of existing Hazardous Substances in New Zealand

The EPA has a Chief Executive Initiated Reassessment (CEIR) programme to reassess existing hazardous substances used in New Zealand. To date the reassessments have been on single substances, generally pesticides; however, the EPA is adopting a new approach which involves reviewing groups of substances. This new approach:

- is more efficient
- avoids unintended consequences where substances that pose greater risk or offer lower benefits could be retained
- provides greater consistency in risk management controls, and
- gives more certainty for users about what tools they have available after a reassessment.

The EPA is currently reassessing organophosphate and carbamate insecticides which are widely used in New Zealand horticulture and agriculture as broad spectrum plant protection products, veterinary medicines or both. They have health and environmental impacts and many organophosphates have been banned or restricted in use internationally. This reassessment needs to meet the needs of industry, which require a range of tools in its toolbox to manage pests, while maintaining the safety of people and the environment. The EPA is also reassessing a group of antifouling paints, used to protect boats and other equipment that spend extended amounts of time in fresh or sea water.

HSNO Compliance and Enforcement

The EPA's primary role is the provision of promotion and assurance within the compliance framework, and relies on other agencies to enforce the HSNO Act. The compliance regime for new organisms (including genetically modified organisms) is managed by Ministry for Agriculture and Forestry (MAF) as the sole enforcement agency. Laboratories and field test sites are visited and audited by MAF, and the EPA supports its work through regular liaison, training and contribution to the development of standards.

More than 100,000 hazardous substances are regulated under HSNO, ranging from explosives, industrial chemicals and pesticides through to common household chemicals. The large number of substances regulated, the many different uses, and the range of hazards, mean that the hazardous substances compliance regime is complex.

Focussing the regime on the key safety rules is likely to be the most effective way to manage risk. Communicating these rules to users will raise compliance levels across the board.

Although there is uncertainty about what the levels of industry compliance are, most of the surveys undertaken suggest that compliance maybe low.

Most harm from hazardous substances arise where there is non-compliance. There have been highly visible incidents such as the explosion and fire at Tamahere, but of equal concern are the estimated incidences of chronic occupational illnesses that can arise from unsafe chemical use.

Enforcement of the hazardous substance part of the HSNO Act is carried out by 86 separate agencies. For example, the Department of Labour (DoL) enforces the Act in places of work, where use of high risk hazardous substances is spread over an estimated 150,000 workplaces, and the Ministry of Health has responsibility where there are risks to public health.

The former ERMA New Zealand previously notified the Minister for the Environment that there was insufficient enforcement in places of work. Our annual assessment of enforcement agency performance is expected to be provided to you in December 2011.

The HSNO Act relies heavily on certified, private market providers (Test Certifiers) to perform location, equipment and personnel assessments, which are designed to ensure the safe management of hazardous substances. The EPA is working to ensure there is a robust and credible test certification regime, although there are uncertainties regarding the future availability of test certifiers in some areas. [withheld consistent with Section 18d) of the Official Information Act 1982]. However, this may not resolve the shortage of certifiers in some of the more highly specialised areas where specific qualifications and experience are required.

Resource Management Act 1991

Proposals of National Significance

The EPA has functions under Parts 4A and 6AA of the RMA to facilitate the decision making process for proposals of national significance. At present the EPA is processing two applications lodged under section 145 of the RMA and has received one appeal on the recently determined Plan Change for the Transmission Gully proposal. Pre-lodgement engagement is also underway for a number of applications to be lodged in the next 12 months.

NZTA's Plan Change Transmission Gully Proposal

After the Board of Inquiry made its decision on this proposal an appeal was lodged on points of law in the High Court by the Rational Transport Society. The Society was a submitter on the proposal. Its appeal is on the basis that the Board made errors in the legal tests applied in its decision, errors of fact in relation to Part II of the RMA and erred in law when assessing aspects of the plan change.

In anticipation of any direction by the High Court for the Board of Inquiry on the proposal to supply information or prepare reports, the Board, which had become "functus officio", was reinstated by Cabinet in November 2011. A pre-hearing conference held in the High Court in November 2011 has set the matter down for a hearing in early December 2011.

NZTA's Transmission Gully Proposal

On 15 August 2011, the EPA received a joint application from the New Zealand Transport Agency (NZTA), Porirua City Council and Transpower New Zealand Limited for notices of requirement and resource consents relating to the construction, operation and maintenance of the proposed Transmission Gully route.

The Transmission Gully Proposal (TGP) is part of a two stage application process. Stage one, NZTA's request for changes to the Greater Wellington Regional Freshwater Plan, was approved, with amendments, by a Board of Inquiry. The final decision and report for the plan change was released on 10 October 2011.

In September 2011, the Minister for the Environment directed that the TGP application be heard by a Board of Inquiry. The application was publically notified in mid September, and the submission period is now closed. A total of 69 submissions were received and half of those support the proposal. The hearing is scheduled to begin in early February 2012 in Wellington and a final decision must be released by mid June 2012, unless a time extension is given by you.

New Zealand King Salmon Plan Change

On 3 October 2011, the EPA received an application from the New Zealand King Salmon Company Limited (NZ King Salmon) seeking changes to the Marlborough Sounds Resource Management Plan (the Plan), eight concurrent resource consents relating to proposed salmon farming areas, and a further resource consent for a salmon farm and salmon farming activities in the Marlborough Sounds.

The changes to the Plan and resource consents sought in this application are solely restricted to the Coastal Marine Area, thus it falls solely under the jurisdiction of the Minister of Conservation. The EPA recommended to the Minister that the proposal was of national significance and that it should be determined by a Board of Inquiry. The Minister of Conservation agreed and directed the matter to a Board of Inquiry, chaired by Judge Gordon Whiting, in November 2011.

The Board of Inquiry will meet for the first time on 17 December 2011. It is expected that it will determine whether the plan change applications will be accepted or rejected at this meeting. If accepted, the Marlborough District Council will prepare the plan change and the full proposal, including the resource consent applications. It is expected to be publicly notified in March 2012.

NZTA pre-lodgement discussions

The EPA is holding pre-lodgement discussions with NZTA, which has identified a number of roads of national significance and indicated an intention to lodge applications for three of these in the next year:

- MacKays to Peka Peka (part of the Wellington Northern Corridor), [withheld consistent with Section 18d of the Official Information Act 1982]
- Christchurch Southern Motorway, [withheld consistent with Section 18d of the Official Information Act 1982]
- Basin Reserve Proposal, due to be lodged [withheld consistent with Section 18d of the Official Information Act 1982], and
- Peka Peka to Otaki (part of the Wellington Northern Corridor), [withheld consistent with Section 18d of the Official Information Act 1982].

Climate Change Response Act 2002

Operation of the New Zealand Emission Unit Register (Registry)

On December 5, 2011, the Registry transferred from the Ministry of Economic Development to the EPA.

The Registry is New Zealand's national register of emission units. It enables persons to hold and transact emission units, including transacting units with overseas parties. The Registry assists New Zealand in meeting its obligation under the Kyoto Protocol, including holding the units New Zealand has been assigned under the Protocol.

The Registry is also used to administer the Emissions Trading Scheme (ETS) – allowing participants to register, submit their emission returns and receive or surrender units, and transferring units to allocation recipients. The Registry team currently administers the Stationary Energy, Industrial Processes and Liquid Fossil Fuel sectors. From 1 January 2012 the Registry will also administer the Agricultural, Synthetic Greenhouse Gas and Waste sectors.

The Registry was originally developed to meet New Zealand's obligations under the Kyoto Protocol. It became operational for this purpose on 6 December 2007. With the establishment of New Zealand's ETS, the functionality of the Registry was extended during 2009 and 2010 to include the creation of the New Zealand Unit (NZU), the associated transaction types, and to facilitate participants to meet their obligations.

Key dates

New participants from the Synthetic Greenhouse Gases, Waste and Agriculture sectors must report their emissions from 2012. The estimated 450 - 600 new participants must register by 30 January 2012. The first report for all sectors is due between 1 January and 31 March 2013.

Emerging Challenges

A key challenge will be to successfully integrate the Registry, the underlying business processes and its people into the EPA during a period when processing volumes are expected to peak. In December (as a

result of the 30 November Forestry Allocation Plan deadline) Registry staff will be processing account opening applications approximately 60 - 75% over and above normal.

The ETS is still developing at both a policy and operation level. In particular the 2011 review of the ETS highlights a number of potential amendments to the legislation. It will be important to ensure that the Registry has sufficient investment, and capacity to be flexible enough to respond to any changes within the required legislative timeframes.

The Registry is reaching the end of its first phase of development; the EPA will be planning for its replacement during the 2012/13 financial year. This is in addition to the ongoing business as usual investment required to maintain security of the system and its data, pre-empting emerging threats and meeting the needs of account holders.

ETS Industrial Allocations

On December 5, 2011, the Industrial Allocations team transferred from the Ministry for the Environment to the EPA.

The Government is providing financial assistance to reduce the impact of the ETS on some industry sectors by providing them with New Zealand Units (NZUs). This allocation of NZUs compensates eligible businesses for increased energy and fuel costs under the ETS and will help businesses make the necessary changes to reduce their greenhouse gas emissions and adjust to emissions pricing.

The main functions of the ETS Industrial Allocation team are to facilitate the allocation of units to eligible entities and to facilitate the audits and compliance checks undertaken on selected firms that have received an allocation.

For an activity to be eligible for an allocation of NZUs it must be *emissions-intensive* and *trade-exposed*. If someone is carrying out an activity that they believe may be eligible for an allocation, they can apply to the Ministry for the Environment (MfE) to have it assessed. If it is decided that an activity meets the eligibility criteria, the activity is then regulated. Once regulated, all persons carrying out the activity are able to apply to the Industrial Allocations team for an allocation.

Key dates

Between 1 January and 30 April 2012 legal entities that are carrying out any of the 28 eligible activities under the industrial allocations provisions are able to submit a record of their production volumes in order for the EPA to assess their allocation entitlement.

Emerging Challenges

There are two emerging challenges. The first is to successfully integrate the Industrial Allocations team and its functions into the EPA including a new IT system for application processing. This is a high priority as the application period opens on 1 January 2012. The second is to educate eligible applicants and continue to improve forms in order to reduce the error rates and applicant support requirements.

Regulatory Maintenance

The EPA and MfE are involved in regular scanning of regulations for simplification and cost and benefit impacts. The EPA has inherited a diverse set of regulations which requires scrutiny to ensure they are relevant and up to date. For example, the HSNO Act hazardous substances regulations have not been subject to a major review since they were promulgated in 2001 and the HSNO Methodology promulgated in 1998 is out of date.

Amendments to the hazardous substances regulations

[withheld consistent with Section 18d) of the Official Information Act 1982]

These amendments were consulted on in early 2010 by the former ERMA. [withheld consistent with Section 18d) of the Official Information Act 1982]

The proposed regulatory changes will reduce compliance costs, make technical corrections, and improve the workability of the regulations.

Hazardous Wastes

The EPA assumed responsibility on 1 July 2011 from the Ministry for Economic Development for the issue of permits for the import and export of hazardous wastes. The associated regulations were revised on 1 July to provide less discretion for the EPA when deciding on the granting of permits. This change has had particular implications for the export of used lead acid batteries (ULABs) as the EPA has fewer grounds to refuse an export permit. MfE is reviewing the policy regarding the export of ULABs which may result in specific policy direction to the EPA, or a change to the regulations.

HSNO regulations prescribing organisms as not new

Organisms not present in New Zealand before 29 July 1998, but which arrive naturally, are still “new organisms” in law until regulations are passed to make them “not new organisms”. That means that they are subject to the provisions of the HSNO Act and persons wishing to undertake research on them must first obtain an approval from the EPA. This creates difficulties for pest management research where the pest new organism is already widely dispersed in the environment making the need for an approval both obstructive, and the containment of the pest difficult to prove.

The EPA surveys industry and research organisations annually to ascertain whether there are any pest new organism species in this situation with a view to seeking Cabinet approval to have such organisms made not new by regulation. These efforts support industry in finding effective mechanisms for pest management.

International Activity

There are a number of multilateral agreements that the EPA engages with. Participation is undertaken in accordance with a plan prepared annually with MfE. When required, EPA staff are included in official

delegations to appropriate international meetings. This involvement is identified in specific briefings submitted to you as required.

Development of the Exclusive Economic Zone and Continental Shelf (EEZ) Bill

The EEZ Bill is intended to fill gaps in the regulation of the environmental effects of activities in the EEZ and Extended Continental Shelf. Under the Bill, the EPA will be responsible for implementing the legislation, including carrying out information management, monitoring and enforcement functions. The EPA will also be required to make decisions on marine consent applications for activities in the EEZ.

When the EEZ Bill was introduced, voluntary interim measures were also announced. The interim measures are intended to foreshadow what will be required when the EEZ Bill comes into force. Under the interim measures, industries with plans to undertake drilling of new exploration wells for petroleum have been asked to prepare environmental impact assessments and provide them to the EPA, for review, on a voluntary basis.

The EPA has set up an EEZ Establishment Project to ensure that EPA is operationally ready to undertake the functions required of it in relation to management of effects in the EEZ.

An important part of the EPA EEZ Establishment Project includes providing operational perspectives on the functionality of the policy, legislation and regulation that is developed. This input includes being appointed as an advisor to the EEZ Bill select committee and parliamentary process.

Part 3 - Pending Decisions or Actions

Nationally Significant Proposals

NZTA's MacKays to Peka Peka Proposal

NZTA is expected to lodge their MacKays to Peka Peka Proposal (part of the Wellington Northern Corridor Road of National Significance) with the EPA [withheld consistent with Section 18d) of the Official Information Act 1982]. The EPA is required to provide a recommendation to you, within 20 working days of lodgement, advising whether the proposal is of national significance, and whether it should be directed to a Board of Inquiry, the Environment Court, or the relevant local authority. Following the EPA's recommendation, you are required to make a direction on who should hear the matter. If it is directed to a Board of Inquiry, you must also appoint members to that board. There is no statutory time frame on Ministerial direction.

HSNO Act

Regulations

[withheld consistent with Section 18d) of the Official Information Act 1982]

Call-In under the HSNO Act

There is potential for applications to be called in under the HSNO Act. It is your responsibility to decide whether any HSNO Act applications fit the criteria to be called in. The criteria that justify you calling in an application relate to specified significant effects. The Ministry for the Environment support you in this process through their weekly Status Reports. On formal receipt, we notify you and the Ministry of all applications that are of significant public interest.

Appendix One:

Environmental Protection Authority

December 2011

