



MEMORANDUM OF UNDERSTANDING

between

WorkSafe New Zealand

and

Environmental Protection Authority

8 August 2017

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THIS MEMORANDUM OF UNDERSTANDING is made on 8 August 2017

BETWEEN WorkSafe New Zealand

AND Environmental Protection Authority

INTRODUCTION

1. WorkSafe New Zealand (WorkSafe) is a Crown entity established under the WorkSafe New Zealand Act 2013. It is the primary workplace health and safety regulator in New Zealand. WorkSafe's main objective is to promote and contribute to securing the health and safety of workers and workplaces.
2. The Environmental Protection Authority (EPA) is a Crown entity established under the Environmental Protection Authority Act 2011. The EPA is responsible for regulatory functions concerning New Zealand's environmental management. These include administering applications for proposals of national significance under the Resource Management Act 1991, managing the New Zealand Emissions Trading Scheme and New Zealand Emissions Trading Register, regulating hazardous substances, new organisms, ozone depleting chemicals, hazardous waste exports and imports, assessing environmental effects in Antarctica, and managing the environmental effects of activities in New Zealand's Exclusive Economic Zone and Continental Shelf (EEZ).
3. WorkSafe and the EPA have an ongoing relationship in respect of the management of hazardous substances, and joint activities in the EEZ.
4. The Working Safer Reforms have made changes to the regulation of hazardous substances, as described below. This has provided WorkSafe and the EPA the opportunity to revisit their working relationship and agree on the principles that will guide that relationship.
5. This Memorandum of Understanding ("MOU") revokes and replaces all previous MOUs between WorkSafe and the Environmental Protection Authority.

CONTEXT

The Working Safer Reforms

6. The Working Safer Reforms have changed the way hazardous substances are managed in New Zealand. The Health and Safety at Work Act 2015 (HSWA) came into force on 4 April 2016 and is the new statute for workplace health and safety. The Health and Safety at Work (Hazardous Substances) Regulations (HSW HS Regulations) set out how hazardous substances in the workplace will be managed.
7. When the HSW HS Regulations commence, the responsibility for managing hazardous substances in workplaces will move from the Hazardous Substances and New Organisms Act 1996 (HSNO) to HSWA. WorkSafe will undertake enforcement under HSWA, and will also be responsible for enforcing workplace environmental and disposal controls in a workplace, under HSNO.
8. The EPA will continue to be responsible for those aspects of hazardous substances management that remain under the HSNO legislative framework. The EPA will also have a new compliance and enforcement role for ensuring compliance at the top of the supply chain.
9. The WorkSafe New Zealand Act 2013 requires WorkSafe to foster a consultative relationship with the EPA when carrying out its functions, duties and powers in respect of hazardous substances (section 10(ja)).
10. The regulatory changes provide a clear regulatory obligation on both Parties to work together and collaborate. When the relevant sections of the HSNO Amendment Act 2015 come into force the following will apply:
 - section 11(2A) of HSNO; On commencement of section 7 of the HSNO Amendment Act 2015 the EPA, in carrying out its functions, duties and powers, will be required to foster a cooperative and consultative relationship with WorkSafe.
 - section 58(1)(c)(ii) of HSNO; On commencement of section 14 of the HSNO Amendment Act 2015, the EPA will be required to have particular regard to submissions made by WorkSafe in relation to an application for approval to import or manufacture hazardous substances.

11. This change to the legislative framework for the regulation and management of hazardous substances entails the EPA and WorkSafe working together and collaborating to provide a joined up service.
12. This MOU recognises that the success of WorkSafe and the EPA is interlinked, and notes that their outcomes and strategic intentions are aligned.

INTERPRETATION

13. For the purposes of this MOU, the following terms are defined.

Areas of common interest means those matters where both Parties have a joint interest and require cooperation in the effective management, regulation and enforcement in workplaces of hazardous substances.

Parties means the signatories to this MOU and its schedules.

Third party means someone not party to the MOU.

PURPOSE

14. The overarching desired outcome of this MOU is to build an enduring relationship between the Parties to achieve a whole of government approach to the effective regulation and management of hazardous substances, and other areas of common interest including joint activities in the EEZ, in the interests of ensuring the safety of the public and workplaces, and of protecting the environment.
15. This MOU's overarching purpose is to set out the guiding principles for how the Parties will work together and show respect and understanding of each other's roles.
16. This document notes that the regulatory responsibilities of each Party in relation to hazardous substances will be performed most effectively through collaboration, cooperation, and coordination with the other Party.
17. This MOU establishes a foundation of shared assumptions and a framework for the current and future relationship of the Parties. This is done through setting out the interagency alignment required for a whole of government approach to hazardous substance regulation. This includes setting out the assistance or support each Party may provide the other in certain circumstances.
18. Details of assistance, cooperation or support that may be provided in accordance with this MOU will be detailed in the schedules to this MOU.
19. Nothing in this MOU prevents either Party from providing assistance, cooperation and support outside of the terms of this MOU or its schedules, where there is agreement between the Parties.

PRINCIPLES

20. The Parties agree to collaborate, cooperate and coordinate their activities in accordance with the following principles:
 - a. **Open communication** – each Party will communicate openly, collegially, and promptly to achieve the best outcome for the regulation and management of hazardous substances.
 - b. **Collaboration** – each Party will work to seek mutually beneficial outcomes guided by common goals and an appreciation of each Party's drivers.
 - c. **Mutual respect** – each Party recognises that the other has a valid role in their respective area and that the Parties need to work together.
 - d. **No surprises** – each Party will endeavour to inform the other of any emergent situation in an area of common interest in relation to the regulation and management of hazardous substances as soon as practicable.
 - e. **Integrity** – each Party will actively cooperate in a manner that recognises the other Party's functions, duties and powers in a way that fosters mutual respect and trust.
 - f. **Responsiveness** – each Party will act with the responsiveness required to address the operational or organisational matter being considered.

PARTIES' REGULATORY ROLES

WorkSafe

21. WorkSafe operates under HSWA¹ and other legislation. WorkSafe is the primary regulator for the health and safety of workers and workplaces.
22. WorkSafe's functions are to:
 - a. advise on the operation of the workplace health and safety system, including coordination across the different components of the system
 - b. make recommendations for changes to improve the effectiveness of the workplace health and safety system, including legislative changes
 - c. monitor and enforce compliance with relevant health and safety legislation (including enforcement of disposal and ecotoxic controls under HSNO within workplaces)
 - d. publish information about its approach to enforcing compliance and its performance standards for completing investigations in relation to enforcing compliance
 - e. make recommendations about the level of any funding (including fees or levies) that WorkSafe requires to effectively carry out its functions
 - f. develop codes of practice
 - g. develop safe work instruments
 - h. provide guidance, advice, and information on workplace health and safety to:
 - i. persons who have duties under the relevant health and safety legislation; and
 - ii. the public
 - i. promote and support research, education, and training on or in workplace health and safety
 - j. collect, analyse, and publish statistics and other information relating to workplace health and safety
 - k. engage in, promote, and coordinate the sharing of information with other agencies and interested persons that contribute to workplace health and safety
 - l. foster a cooperative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to workplace health and safety
 - m. foster a cooperative and consultative relationship with the EPA when carrying out its functions, duties, and powers in respect of hazardous substances
 - n. promote and coordinate the implementation of workplace health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way
 - o. perform or exercise any other functions or powers conferred on WorkSafe by or under any other enactment
 - p. perform any additional function that the Minister for Workplace Relations and Safety directs under section 112 of the Crown Entities Act 2004.

Environmental Protection Authority

23. The EPA's objective under the Environmental Protection Authority Act 2011 is to undertake its functions 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.
24. The EPA has specific functions set out in the Acts it operates under. It has decision-making functions, and its independence in exercising its powers, duties, or functions is specifically provided for.

¹ Previously the Health and Safety in Employment Act 1992.

25. The EPA has specific duties, functions, and powers under HSNO. When the HSW HS Regulations come into force, and the relevant sections of the HSNO Amendment Act are commenced, these will include:
 - a. the assessment and approval of the importation and manufacture of all hazardous substances
 - b. classifying all hazardous substances
 - c. setting EPA controls that apply to all hazardous substances, including controls for labelling, safety data sheets, and packaging
 - d. setting environmental controls, disposal controls, non-workplace controls, and content controls for hazardous substances, and
 - e. establishing and maintaining the hazardous substance hazard classification system.
26. The EPA will have a new compliance and enforcement role for ensuring compliance with rules at the top of the supply chain to ensure:
 - that importers and manufacturers have a HSNO approval
 - compliance with labelling, packaging and safety data sheets requirements
 - compliance with the rules around the allowable limits of certain hazardous substances within products and the bans on persistent organic pollutants; and
 - compliance with information requirements.
27. The EPA also has responsibilities for considering applications and managing compliance and enforcement activities in the Exclusive Economic Zone and Continental Shelf (EEZ) under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

PARTIES' COMMITMENTS AND ACTIONS

28. In order to work effectively toward the desired outcome set out in clause 14, each Party agrees to meet the intention of this MOU.
29. Parties may develop schedules to this MOU to provide further detail on the collaboration, cooperation and coordination they commit to under this MOU.
30. The sub-sections below describe how the Parties will work together in relation to the regulation and management of hazardous substances to achieve the desired outcome.
31. The sub-sections below also apply to how the Parties will work together in relation to decision-making and enforcement of activities in the EEZ.

Organisational alignment

Jurisdictional boundaries

32. The Parties will clarify with and for each other their own jurisdictions, including specific regulatory roles and responsibilities in relation to areas of common interest.
33. The Parties will work together to identify and manage any overlaps in responsibility, or any gaps in legislation and regulatory guidelines.

Strategic alignment

34. The Parties will work together to ensure they are strategically aligned with one another in areas of common interest.
35. Prior to the commencement of any financial year, the Parties will meet at least once to discuss:
 - a. each Party's work priorities for the following year; and
 - b. areas where the Parties will look to increase collaboration and cooperation between them, including the alignment of enforcement and prosecution policy.
36. The meetings can be solely between the two Parties or may involve Third parties where it is considered a multi-agency approach would improve the regulation and management of hazardous substances.
37. The meetings do not preclude other ongoing activities to build the relationship between the Parties.

Policy advice

38. In developing policy advice or when participating in policy processes run by other agencies, in particular the Ministry of Business, Innovation and Employment and the Ministry for the Environment, each Party will consult the other in areas of common interest.
39. Each Party will endeavour to advise the other Party of any emerging policy issue considered to be of interest to the other Party in areas of common interest. Information relevant to the issue will be provided in a timely manner to ensure the other Party has the opportunity to participate in the development of the relevant policy.

Legal alignment

40. The Parties agree that before pursuing legal action they will, where practicable, discuss any matter, including litigation or a proposed prosecution, that is likely to result in a material change in the administration of the law or may otherwise adversely affect the other Party.
41. The Parties' legal teams will also collaborate by sharing information about any changes to the law and case law in areas of common interest.

Compatible systems and processes

42. The Parties will establish compatible processes and systems for recording, reporting and monitoring the regulation and management of hazardous substances. This may include aligning operational intelligence and case management systems to allow for the most effective and efficient use of information gathered by either Party.

Communications and media

43. The Parties will endeavour to:
 - a. inform each other at the initial stage of development of any communications campaign they intend to undertake that is relevant to the other Party or to the content of this MOU
 - b. take all reasonable steps to ensure adequate time is given for the other Party to provide comment where appropriate; and
 - c. explore opportunities to conduct joint communications campaigns.
44. Where possible, the Parties will consult each other when providing information or comment to the media on a matter that is relevant to the other Party or to the content of this MOU.

Operational and enforcement activities

Information and intelligence sharing

45. The Parties may develop principles, strategies and processes to share relevant information to enhance interagency collaboration, cooperation and coordination.
46. Wherever practicable, these principles, strategies and processes will use available technology and may be adapted with changes in technology.
47. Relevant information to be shared includes, but is not limited to:
 - a. information, such as statutory notifications, which it is mandatory to share
 - b. information about hazardous substances matters, including risks from new technologies, substances or workplace processes, and the means of mitigating those risks
 - c. operational intelligence which might assist the regulatory function of the other Party, including workplace health and safety notifications
 - d. evidence gathered in the course of an assessment or investigation which might assist the other Party with enforcement action; and
 - e. any significant enforcement action taken by one of the Parties.
48. Information will be shared only when it is relevant to the other Party, and when doing so is consistent with the law, including the Official Information Act 1982, the Privacy Act 1993, and the Criminal Disclosure Act 2008, and is not likely to prejudice the maintenance of the law.

49. Requests from a Third party to one Party for information provided by the other Party will be dealt with in accordance with applicable legislative requirements, including those set out in the Official Information Act 1982, the Privacy Act 1993 and the Criminal Disclosure Act 2008.
50. Information provided by one Party to the other Party will not be released to a Third party unless the Parties first consult on the release of the information.
51. The manner in which information will be shared and the timing of any required consultation may be given effect through schedules to this MOU.

Shared technical expertise

52. The Parties will, where possible and appropriate, share technical expertise in relation to legal, assessment and enforcement activities. The Parties will consult and draw on the expertise of the other Party where appropriate, which may occur in the development of guidance information, codes of practice, and other regulatory instruments, and in undertaking joint inspections, collaboration, audits or assessments.

Joint regulatory activities

53. The Parties may, by mutual agreement, undertake joint assessments and inspections in relation to hazardous substances and on matters relating to activities in the EEZ.
54. The Parties may, by mutual agreement, work together (and with other agencies where required) to collaborate on the resolution of a specific hazardous substances issue, or an issue relating to activities in the EEZ.
55. The detail of how a mutual agreement may be arrived at, or any other details for the joint inspections, collaboration, audits or assessments, including how costs are apportioned, may be included in a schedule to this MOU.

Training

56. The Parties will collaborate in identifying training of common interest and, where practicable, will coordinate training programmes.
57. The detail of how joint training may be undertaken, or any other details relating to the joint training, including how costs are apportioned, can be agreed as training needs are identified and may be included in a schedule to this MOU.

Emergency events

58. In the event of a major emergency involving hazardous substances, the Party with jurisdiction for the event may request from the other Party:
 - technical or operational assistance, or
 - administrative or staff support (particularly where the scale, duration or complexity of the event may result in one of the Parties being unable to effectively carry out its functions, duties or powers).
59. The terms and conditions of any technical or operational assistance, or administrative or staff support, and how that assistance or support is to be funded, may be included in a schedule to this MOU.
60. In each emergency situation, each Party may only act and provide support within its statutory functions commensurate with:
 - the practicability of the Party to provide assistance or support at that time; and
 - the perceived health and safety risks associated with the incident or emergency event.

RELATIONSHIP MANAGEMENT AND DISPUTE RESOLUTION

61. As a general rule, the key points of contact will be between the equivalent managers at each organisation. Regular contact will be kept so that the working relationship remains current and so the Parties retain a shared understanding of each organisation's regulatory roles and responsibilities. Regular contact will be achieved via meetings held at least quarterly.

62. When disputes arise between the Parties about the interpretation or performance of this MOU, representatives or managers of the Parties will, in the first instance, attempt to resolve the dispute at the earliest opportunity.
63. When disputes cannot be resolved by representatives or managers they will be referred to the General Manager Better Regulation at WorkSafe and the General Manager Hazardous Substances and New Organisms at the EPA.
64. If disputes cannot be resolved between the General Manager Hazardous Substances and New Organisms and General Manager Better Regulation within 28 days of referral, then the matter will be referred, in writing, to the Chief Executive WorkSafe and Chief Executive EPA for final resolution.
65. The Parties will resolve any disputes arising under the MOU by discussion and cooperation and will not refer any dispute to any Third party.

SCHEDULES

66. From time to time the Parties will develop schedules to this MOU which will detail the terms and conditions for specific procedures and activities between the Parties, including how costs will be apportioned.
67. Every schedule will set out:
 - a. the representative of each Party who is responsible for the schedule, and contact details for those persons, and
 - b. an agreed policy and process for the sharing of resourcing for any joint activities.
68. Schedules may be added, amended or revoked by agreement between the General Manager Better Regulation at WorkSafe and the General Manager Hazardous Substances and New Organisms at the EPA (or by more senior level representatives of each Party).
69. A list of the schedules and their current status and contact positions will be included in Schedule 1 *Designated Coordinators*. The intention of Schedule 1 is to ensure its list of schedules, their current status and contact details can be updated by the Parties as schedules are added, amended or revoked.

RESOURCING

70. The provision of any support, cooperation or assistance under this MOU and its associated schedules will be subject to the availability of the Parties' resources. Such support may be limited, adjusted or terminated as deemed necessary by either Party to meet its other operational commitments.
71. Parties may identify areas where both will benefit from shared resourcing.

STATUS OF MEMORANDUM OF UNDERSTANDING AND SCHEDULES

72. The following applies to this MOU and its schedules (unless the schedule concerned specifically states otherwise):
 - a. the effective date is the date of the last signature, and it will continue to be in effect until termination
 - b. a review is to be conducted every three years and amendments can be made in writing by mutual agreement of the Parties
 - c. termination of the MOU can only be instigated by a Chief Executive of one of the Parties. Termination can take place at any time by either Party's Chief Executive giving the other Party's Chief Executive written notification. Termination will be effective immediately
 - d. termination of the MOU will terminate all schedules, but termination of a schedule will only affect that schedule
 - e. termination of a schedule can be instigated either by the General Managers of each Party who have been designated responsibility for the schedule (or by more senior level representatives of one of the Parties) and can take place at any time by either Party giving the other written notification. Termination will be effective immediately

- f. the most recent version of the MOU and schedules supersedes and cancels all previous versions; and
- g. there is no intention to create any legal rights, duties or obligations, and this MOU is not binding on the Parties.

THIS MEMORANDUM OF UNDERSTANDING is made on 8 August 2017

BETWEEN WorkSafe New Zealand

AND Environmental Protection Authority

SIGNED



Nicole Rosie
Chief Executive
WorkSafe New Zealand



Dr Allan Freeth
Chief Executive Officer
Environmental Protection Authority

Proactive release