



SUBMISSION

+64 (0)4 499 4225 | PO Box 5069, Wellington 6140 New Zealand | www.aphanz.co.nz

To: HSInfringements@epa.govt.nz and Ministry for the Environment and Worksafe NZ (other affected parties)

Submission on: [Implementation of a hazardous Substances' infringement scheme](#)

Date: 28th August 2023 (requested extension to 29th August)

Organisation name: Animal and Plant Health Association of New Zealand

NZ Business Number: 9429042576433

Email: enquiry@aphanz.co.nz

Submitter: Jo-Anne Stokes
Animal and Plant Health Association of NZ
111 The Terrace
Wellington

Email: Jo-Anne.Stokes@aphanz.co.nz

1. Introduction

- 1.1. Animal and Plant Health Association New Zealand (APHANZ) welcomes the opportunity to comment on the proposals outlined within the *'Implementation of a hazardous Substances' infringement scheme* consultation document from the Environmental Protection Authority (EPA).
- 1.2. APHANZ members are focused on the sections relevant to the research, production, manufacture, and stewardship of hazardous substances, therefore our comments are specific to that area of the proposed infringements.
- 1.3. APHANZ has a current position of supporting regulatory tools where that tool is legally enforceable/warranted, is proportionate to the offence, is fairly and equitably applied and that there is transparency in the application of the tool to manage the related risk to the environment and human health.
- 1.4. The proposed infringement scheme is a list of proposed infringement fees. How scheme fits into the current situation is not described. Given the overall complexities of the HSNO compliance scheme (legislative, group standards, hazard Notices) and alignment with other relevant Acts (Waste Minimisation Scheme (WMS)/Health and Safety at Work Act HSWA) for agricultural chemicals (agchem) and veterinary medicines (vetmed) it is logical to assume that the disconnect between the regulators, territorial authorities and stakeholders will ensue.

1.5 Is an infringement penalty system required?

The EPA did not issue a single HSNO compliance order from July 2020 to June 2022 according to page 74 the most recent EPA annual report [EPA-Annual-Report-2022.pdf](#). Prior to 2020 the enforcement statistics are combined with Worksafe statistics.

- 1.5.1 In comparison WorksafeNZ issued seven HSNO/Worksafe Compliance Orders over the same period (July 2020- June 2022), and 3 Compliance orders between July 2022 - June 2023.
 - 1.5.2 The proposed infringement fee scheme under consultation relates solely to EPA administered area of the HSNO Act and excludes WorkSafe related responsibilities (as Worksafe is not a co-signatory to the consultant document and the document does not refer to HSWA. Therefore, based on the data available, there is no measure to determine that an additional infringement process is required and that any further infringement fee proposals are not serving any regulatory purpose as it relates to the agchem and vetmed industry.
- 1.6 The document mentions the Ministry for the Environment but not the Waste Minimisation Act 2008. There is a disconnect in the infringement scheme where product stewardship is penalised through fining those rendering an agchem container unusable (i.e., Clause 12(2)) when it should be encouraged. The requirements to take product stewardship, currently, is voluntary (becomes mandatory 1 July 2024). Such infringements do not recognise the alignment required with other regulators/regulations.
 - 1.7 Similar regulatory bodies have a scaled approach to compliance. For example, the Biosecurity Act provides for non-compliance measures, including infringement fines. The enforcement is based on if the non-compliance is a deliberate infringement, a technical infringement, or an unintended infringement relative to the risk associated with the non-compliance. The enforcement actions also allow for self-reporting of a potential infringement and the infringement fee may be waived in this instance. The ability to self-report or contact a compliance officer to resolve issues when they occur is a more effective use of limited compliance resources and resolves potential hazards before they cause environmental or health issues. This is a preferable

model where the industry is already highly compliant (no non-compliances for 2 years), compliance personnel are limited, and actions are required as and when they occur to limit risks to the environment or human health.

1.8 In addition, to point 1.7, if fines are too high then there is incentive to cover up an incident, rather than report it.

1.9 Does the infringement scheme address the concerns of the [The Technical Working Group Hazardous Substances Compliance System Findings Report \(June 2019\)](#) through an infringement fee

1.9.1 The TWG report noted that while some elements of the system were robust, such as the hazardous substances classification and approval regime, many other elements required improvements. The report referred to:

1.9.1.1 a fractured system with no clear roles and responsibilities among regulatory agencies

1.9.1.2 lack of system leadership

1.9.1.3 incomplete data and monitoring of hazardous substances.

1.9.1.4 weak oversight of the disposal of hazardous wastes.

1.9.2 The report provided two examples of non-compliances, both related to the management of the Resource Management Act and not to HSNO. The framework of the compliance structure between HSNO regulatory functions and those regulators enforcing HSNO on a regional basis is unclear.

1.9.3 The consultation document did not address any points related to points 1.9.1.2-1.9.1.4.

1.10 The consultation document does not refer to an overall framework of compliance and therefore it is difficult to determine if the areas of concern regarding confusion between EPA and territorial authorities will be improved as there is no data (no non-compliances) to measure an improvement (refer point 1.5).

1.11 If the intent is for the EPA to issue fines where a compliance order is not followed then the recent change in legislation would allow for this to occur (See Section 106 (1) (e) Hazardous Substances and New Organisms Act 1996 No 30 (as of 01 November 2022), Public Act 106 Form and content of compliance order – New Zealand Legislation.

1.12 Instead of issuing fines with a compliance order the EPA are proposing non-compliance with a compliance order in appendix 2, is now to be an offence that would be a proposed infringement offence (s 109 (1)(f)), presumably because the EPA would typically escalate to prosecution?

1.13 The consultation document does not provide what improvement will occur with infringement fees, except to note that the agency is wishing to have a set of middle ground compliance measures (between compliance notices and prosecution), which is already available.

1.13.1 The use of an infringement scheme ignores the use of compliance orders in a stepped approach (section 3.1 of the consultation document notes that an enforcement agency would be able to either issue an on the spot fine or file proceedings for a prosecution). There is no mention of the possibility of using a compliance order as a first step in managing non-compliances and this omission is concerning. Similarly, comments under section 3.6 of the consultation document about 'it being a benefit that minor offences can be dealt with using infringements' indicates that the EPA are not incorporating other measures (i.e., compliance orders) or relate the seriousness of the offence to the relevant tool. Aphanz is concerned that the EPA are wanting to ignore compliance orders and replace previous compliance orders with that listed in Appendix 1.

- 1.13.2 The document encapsulates animal remedies, and this may well not be intended, but is not excluded. Animal remedies are guided by group standards for compliance. Under the proposed infringement scheme there is a high likelihood that those entities relying on the Group Standard will be compromised by the potential for the infringement fee scheme to be misinterpreted. For instance: Hazardous Substances (Labelling) Notice 2017, Clause 16(1) and (3) Failing to specify on the label disposal methods. Fee \$3,000. Under Veterinary Medicines, many of the products assigned to Group Standards are considered lower risk, especially products in small volume packaging. Does this infringement apply?
- 1.13.3 The consultation document directs compliance officers to issue fines upon first detecting a non-compliance and provides no stepped approach. In some issues the direct responsibility for the infringement (product stewardship or user non-compliance) will be difficult to determine without comprehensive examples.
- 1.14 The consultation document indicates that infringement schemes cannot set different infringement fees for individuals and entities/businesses. This suggests that the figure listed is the fine, not a maximum fine, with variations depending on the magnitude of the non-compliance. It would be good if this were confirmed and/or made clearer.

2 Key Recommendations

2.1 Animal and Plant Health NZ recommends that:

2.1.1 A graduated approach is required for compliance to provide education to personnel through the issue of a non-compliance notice and where there is repeated non-compliance for the same offence then the relevant action based on risk can be achieved through compliance notices enhanced through new legislation (See Section 106 (1) (e) Hazardous Substances and New Organisms Act 1996 No 30 (as of 01 November 2022) and based on risk the non-compliance

2.1.2 Compliance officers already have access to an enforcement tool for cases that involve. "Straightforward issues of fact, involve minor or less serious matters, warrant more than a warning, but less than the full sanction of criminal law." A compliance order already fits all three of these criteria.

2.1.3 That the EPA reconsider those offences that are technical non-compliances (i.e., the offences listed in Appendix 1) and not deliberate systematic offending. In most circumstances, where the offences listed in Appendix 1 occur, a compliance order would be a far more appropriate response, and in line with the action that other regulators would take. For example, if Agriculture Compounds and Veterinary Medicines Directorate of the Ministry for Primary Industries (ACVM) noticed an error in the label, their first response would be to advise the registrant to take corrective action, not to fine them – unless we were talking about an example of ignoring what was supposed to be on the label, and it being something that could result in significant risk.

2.1.4 If the EPA are proposing that infringement offences be used mostly for those situations where there is repeated or deliberate non-compliance, then the scheme needs to reflect this in how the offences are described. At present the offences are

listed as any offence whether deliberate or unintended repeated or a first offence would incur infringement fees.

2.1.5 Provide for self-reporting opportunities through guidance so that environmental outcomes are achieved. Reframe from high infringement fees (greater than \$1500) to avoid non-compliances being deliberately hidden.

2.1.6 The offences listed (extracted from the HSNO Act) should include an explanation of the type of severity that would result in an infringement as opposed to other enforcement action. Without this it is difficult to know for sure whether the fines listed are appropriate. For instance, under clause 5(2)9, failing to update an SDS within 5 years is not high risk so long as the other related offence, about ensuring it is updated when necessary to ensure the information remains correct, is done. An SDS being 5 years and 3 months old is not high risk.

2.1.6.1 As an example, if someone/a company is not providing an SDS that complies with the SDS notice, the effect of doing this can vary significantly. If for instance, a company supplies an SDS that does not comply with the SDS notice because they neglect to list "particle characteristics" as a property under section 9, it is likely that this will have no effect on users, and if it is a liquid, it would be appropriate for this field to list N/A. However, failing to include this as a subtitle and the N/A, would technically be a non-compliance. A \$3,000 fine for this would be grossly unjustified, maybe a warning. Similarly, if a user applies 20.5g/ha of substance when the maximum application rate is 20, it should only be a warning, whereas if the same user applies the product at 40 or 60g/ha, a fine would be appropriate.

2.1.6.2 Clause 8 and Clause 32 for the labelling notice offence, is potentially grossly excessive, depending on what is incorrect. If a substance is being labelled as non-hazardous when it triggers serious health and environmental classifications, then yes, absolutely it should be classified this way. However, there will be some errors/omissions which could occur, where the risk is low or medium at most. Many would not warrant any infringement notice or even a compliance order or warning.

2.2 Interpretations of the infringements by the EPA compliance team needs to be provided. Our membership deal with often quite technical rules and most regulators willingly offer clarifications to questions about such rules. Members are often advised by the EPA that "given the EPA's role as an enforcement agency, it would be inappropriate for us to comment on this." This lack of explanation and the lack of clarity from the consultation document, of the instances of where an infringement fee would apply (i.e., interpretation of the intent of the various legal clauses), does not protect the environment. A regulator has a responsibility to provide such clarification, particularly if the consequences of mistakes being made by companies/individuals is that they will be fined.

3 Animal and Plant Health NZ supports changes as follows:

3.1 Exemption of the Animal remedies and Agrichemical industries from the proposed scheme where labelling is referred to (in note 4), as it stands, has many implications. Unless the infringement scheme clearly articulates how the various moving parts are intended to align. The infringement fees do not consider that the thresholds for GHS hazard classification vary between the notices, making compliance confusing for Safety Data Sheets and Product Labels. Products assigned to Group Standards may also have conflicting requirements for labelling or packaging. For many of the offences about failing to

label in accordance with certain regulations, it completely depends on what the omission is as to whether the classification of risk and the proposed fine is appropriate, and this needs to be made clear. Otherwise, the EPA will introduce a compliance regime that imposes large fines for technical non-compliances that carry little to no risk.

3.1 There are a number of offences where the fines listed at greater than \$1000 have the potential to be applied to individuals.

3.1.2 The offence listed as Clause 50(2) of the Hazardous Property Controls Notice, which is set at \$3,000, is likely to be applied to individuals. This is infringement charge for those in the farming industry and contractors depends on the interpretation of the offence and the corresponding risk factors.

3.1.3 The Clause 48 offences against the Hazardous Property Controls are also likely to apply to individuals despite a fine of over \$1,000 being proposed, as are the Clause 60 through 65 offences. The aerial application ones should be higher, but the EPA specifically asked about fines that may be above the \$1,000 threshold that are likely to apply to individuals, and these are.

3.2 The offences where the offence is overstated as to the hazard, include the part about rendering a substance incapable of carrying another substance (Clause 12 (2) of Disposal notice, page 30 of the document, is excessive. The regulator is effectively suggesting a \$3,000 fine for failing to stab a container, even if the container is destined for Agrecovery as a major offence. This would also capture individuals, so should not be a \$3,000 fine. While the clause of the notice excludes household items (i.e., an empty bottle of detergent), for softer agchems the risks will be no greater than this.

4. Questions on the proposed list of infringement offences

Are there any proposed infringement offences listed in **Appendix 1** of the consultation document that you think should **not** be categorised as an infringement offence? Please provide your reasoning.

No

Yes

Proposed infringement offence	Reasoning to not categorise as an infringement offence
Appendix 1 – Low degree of potential harm to be considered for compliance notices only (refer reasoning in point 2.1.3). as this relates AgChem and Vetmeds	
Appendix 1- Medium Degree of potential harm	
All the offences listed (extracted from the HSNO Act) should include an explanation of the type of severity that would result in an infringement as opposed to other enforcement action. Without this it is difficult to know for sure whether the fines listed are appropriate.	
There is no current non-compliances to base the assessment of fees.	
Hazardous Substances (Hazardous Property Controls) Notice 2017, Clause 17(3); Clause 19(4), Failing to certify	Interpretation is required. Each group standard has a set of conditions to manage risks posed by

<p>that all the relevant compliance requirements etc.</p>	<p>the substances throughout their lifecycle. Infringements, unless interpretations are provided, may overrule that of a group standard</p>
<p>Hazardous Substances (Labelling) Notice 2017, Clause 8; Clause 32, Supplying a hazardous substance without a correct label.</p>	<p>Veterinary Medicines (Limited Pack Size, Finished Dose) Group Standard 2020. Risks are low with a small volume packaged product designed for final administration. Veterinary medicines are not Dangerous Goods under the Transport regulations.</p> <p>Depends on the omission from the label and what risk. Many omissions would not warrant any infringement notice or even a compliance order or warning.</p>
<p>Hazardous Substances (Labelling) Notice 2017, Clause 13. Failing to provide on the label (on the container and/or outer package) the relevant GHS pictograms</p>	<p>A major problem to fit on small packaging for products in the Limited Pack Size Veterinary Medicine product assigned to the Veterinary Medicines Group Standard 2020.</p> <p>The Group Standard states:</p> <p>Schedule 1. Part 1. Section 1.(2) <i>Despite clauses 13 and 19 of the Notice, the information specified in those clauses is only required for a specific hazard classification if a corresponding exposure risk is likely to occur during the intended use of the substance.</i></p> <p>Under Agchemical requirements the package size allows the labelling to be modified, but this infringement would contradict that allowance.</p>
<p>Hazardous Substances (Labelling) Notice 2017, Clause 12(2), clause 27(1)(a). Failing to provide a 24-hour emergency contact phone number on the label for substances in the following hazard classes: acute toxicity or skin sensitisation. Fee \$3,000</p>	<p>Refer section 3.3 (the regulator is handing out an excessive fine for not stabbing a agchem container)</p> <p>Veterinary medicines trigger hazard thresholds in very limited hazard classifications. Existing label requirements in the NZ market of “For Animal Treatment” help to prevent inappropriate product use.</p> <p>Contact details for health line, poison line are a public good already in existence.</p>
<p>Hazardous Substances (Labelling) Notice 2017, Clause 15. Failing to</p>	<p>A major problem to fit on small packaging for products in the Limited</p>

provide required label information about other hazards, including first aid and emergency procedures related to those other hazards. Fee \$1,500.	Pack Size Veterinary Medicine product assigned to the Veterinary Medicines (Limited Pack Size, Finished Dose) Group Standard 2020.
Hazardous Substances (Labelling) Notice 2017, Clause 16(1) and (3) Failing to specify on the label disposal methods. Fee \$3,000.	Under Veterinary Medicines, many of the products assigned to Group Standards are considered lower risk, especially products in small volume packaging. Recommend that this proposed Infringement scheme is only appropriate for products supplied in quantities greater than the Land Transport Rule Dangerous Goods 2005 Rule 45001/2005, Part 3 Schedules, Schedule 1, Consistency between regulations is required with the Waste Minimisation Act.

Are there any offences listed in **Appendix 2** of the consultation document that you think should be categorised as an infringement offence? If yes, please list the offence(s) along with your reasoning, and what you consider would be an appropriate infringement fee.

- No
 Yes

Offence	Reason to categorise as an infringement offence	Proposed infringement fee

Other than any offences covered by Question 2, are there any hazardous substance offences that you think should be included as an infringement offence? If yes, please list the offence(s) along with your reasoning, and what you consider would be an appropriate infringement fee.

- No
 Yes

Offence	Reason to categorise as an infringement offence	Proposed infringement fee

Are there any proposed infringement offences listed in **Appendix 1** of the consultation document that would be challenging to enforce as they are currently written, or may potentially involve complex issues of fact? Please provide your reasoning.

No

Yes

Proposed infringement offence	Reasoning
<p>Hazardous Substances (Labelling) Notice 2017, Clause 13. Failing to provide on the label (on the container and/or outer package) Fee \$3,000</p>	<p>A major problem to fit on small packaging for products (Limited Pack Size Veterinary Medicine product Group Standard 2020 and Aphanz labelling guide) and sizing of AgChem is permitted to provide a condensed SDS in certain circumstances (to transporter etc.)</p> <p>The Group Standard states:</p> <p>Schedule 1. Part 1. Section 1.(2) <i>Despite clauses 13 and 19 of the Notice, the information specified in those clauses is only required for a specific hazard classification if a corresponding exposure risk is likely to occur during the intended use of the substance.</i></p>

Questions on infringement fees

Do you disagree with any of the proposed infringement **fees** listed in the infringement schedule in **Appendix 1** of the consultation document? Please provide your reasoning.

No

Yes

Proposed infringement offence and fee	Reason for disagreeing with the proposed fee
<p>Hazardous Substances (Labelling) Notice 2017, Clause 8; clause 32. Supplying a hazardous substance without a correct label. Fee \$3,000</p>	<p>Requires a review as a very expensive infringement for Limited Pack Size Veterinary Medicine product assigned to the Veterinary Medicines (Limited Pack Size, Finished Dose) Group Standard 2020. Refer to .</p>
<p>Issue with fines for each clause of the Hazardous Substances (Labelling) Notice 2017. There are individual fines designated to each Clause number from the Labelling Notice. This is excessive.</p>	<p>Potentially one non-complying label could receive more than one fine. First fine could be for supplying the product without the correct label. Then the additional individual fines could</p>

	be for each missing non-complying label element.
--	--

In your view, do any of the infringement offences with a proposed fee of \$1,000 or greater have the potential to be applied to individuals? Please provide your reasoning.

- No
 Yes

Proposed infringement offence	Reason showing the potential to be applied to individuals
Any of the infringement offences with a proposed fee of \$1,000 or greater have the potential to be applied to individuals.	This infringement system has the potential to make this type of employment role untenable for the employee in the HSNO function. See point 3.3
The offence listed as Clause 50(2) of the Hazardous Property Controls Notice, which is set at \$3,000, is likely to be applied to individuals.	See point 3,2

In your view, does the proposed fee structure allow for proportionate and effective disincentives to non-compliance? Please provide your reasoning.

- Yes No

Reasoning: The fee structure depends on the interpretation of the individual infringements. Currently, there is no way to judge if the fees are proportionate to the risk.

Questions on the benefits and costs of an infringement scheme

In your view, will a hazardous substances infringement scheme lead to better environmental outcomes over the long-term? Please provide your reasoning.

Yes No

Reasoning: **Ignorance of HSNO law, the complexity of the scheme to provide compliance to the law leads to unintended non-compliance or technical non-compliance that has no environmental impact.**

Are there costs for enforcement agencies or other parties that you don't see accounted for here? Please provide your reasoning.

Yes No

Reasoning: Given the lack of non-compliances in the first instance (none in the last 3 years) and the complexity of the proposed scheme, it is likely that highly skilled resources will be employed with little result in improving environmental outcomes.

Question on implementation and evaluation

Do you see any challenges for enforcement agencies to implement this infringement scheme? Please provide your reasoning.

Yes No


Reasoning: **Refer points 1-3 of this document.**

Send us your completed form by 5:00pm on 28 August 2023

Ways you can send your completed form to us

 by email – HSInfringements@epa.govt.nz

 by post – Environmental Protection Authority, Private Bag 63002, Wellington 6140

 in person – Level 10, 215 Lambton Quay, Wellington

If you need any help with the form, you can call or email us on:

- 0800 225 537 (from within New Zealand)
- +64 04 916 2426 (from overseas)

email: HSInfringements@epa.govt.nz

5. About Animal and Plant Health NZ

We are the peak industry association representing more than 85 multinational and New Zealand based companies that manufacture, distribute, and sell crop protection and animal health products that keep our animals healthy and crops thriving. Our mission is to protect and enhance the health of crops, animals, and the environment, through innovation and the responsible use of quality products and services.

Our objectives are to:

- Strive for effective and sustainable animal health and crop protection technology through industry leadership and advocacy.
- Achieve a balanced and science-based regulatory environment that gives members freedom to operate and grow in New Zealand.
- Enable farmers and growers to supply high quality food and fibre into domestic and global markets.
- Create an environment that encourages competition through innovation.
- Promote stewardship and responsible use of products.
- Support the health and wellbeing of pets, livestock, and people.

Appendix 1: