

MINISTERIAL INQUIRY INTO THE MANAGEMENT OF CERTAIN HAZARDOUS SUBSTANCES IN WORKPLACES

The Department of Labour's progress towards the fulfilment of the recommendations

	Recommendations	Agency	Action Report
	<p>Identified as follows:</p> <p>Priority recs. (9, 11, 12, 14, and 18)</p> <p>Recs. with long-term significance (6, 21)</p>		<p>This report indicates what action will be taken and by when. Medium term = 2003/04 year. The initial progress report was issued in December 2003.</p> <p>This is version 2: issued June 2004 significant changes from the initial report are highlighted in yellow.</p>
	<p>General</p>	<p>OSH</p>	<p>The report's recommendations are central to our current work activities and our planning for the 2004/05-year.</p> <p>The Department of Labour's Occupational Safety and Health Service (OSH) has contacted the Environmental Risk Management Agency (ERMA), Civil Aviation Authority (CAA), Maritime Safety Authority (MSA) and the Accident Compensation Corporation (ACC) to bring to their attention the findings of the report and to discuss how these agencies might best contribute to the implementation of the recommendations.</p> <p>A synopsis of the submissions made to the inquiry has been developed to inform ACC's gradual process panel.</p>
<p>1</p>	<p>That in the administration of the regulatory framework that governs the workplace safety and health risks of exposure to the toxic effects of hazardous substances, the important role of the HSE Act, and of the 'identify, eliminate, isolate, minimise, protect' duties in particular, should be acknowledged and reflected in practice on an ongoing basis.</p>	<p>OSH</p>	<p>Background</p> <p>Not only does OSH agree that it is sensible to apply the HSE Act's "systematic management of hazards" framework to hazardous substances; it is required of employers and others by the HSE Act. This approach has been consistently applied to date by OSH in administering both the HSE and HSNO Acts. In particular this approach to the management of hazardous substances has been advocated since August 1997 in the Approved Code of Practice for the Management of Substances Hazardous to Health (MOSHH ACOP) by illustrating how sections 7 to 10 of the HSE Act are applied to the control of hazardous substances.</p> <p>Current action:</p> <p>The Environmental Risk Management Authority has initiated a strategy that aims to progressively reduce the adverse effects of hazardous substances on the environment and the health and safety of people and communities through:</p> <ul style="list-style-type: none"> ▪ improvements in the risk management of substances in use; and ▪ a progressive shift to the use of substances with inherently reduced risk,

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2	<p>That research should be initiated by OSH to investigate the extent to which employers, particularly those in small to medium enterprises, find the <i>MOSHH ACOP</i> a useful guide to HSE implementation and do, in reality, adopt its recommendations.</p>	OSH	<p>Immediate action taken:</p> <p>OSH has held discussions with representatives of the Ministry for the Environment (MfE), ERMA and the NZ Chemical Industry Council regarding the development of information to support the hazardous substances provisions of the HSNO Act.</p> <p>This has included consideration of the future of the <i>MOSHH ACOP</i>. In this regard consideration has been given to whether a revised the <i>MOSHH ACOP</i> should be issued under the HSE or HSNO framework.</p> <p>It is accepted that a revision of the <i>MOSHH ACOP</i> should be undertaken and that this should be part of a wider exercise to produce a number of codes of practice to support the hazardous substances provisions of the HSNO Act.</p> <p>OSH is also considering alternative methods to provide similar guidance. In particular web-based information and opportunities that may arise through training provision. A number of international models are being investigated e.g. the Control of Substances Hazardous to Health Regulations (COSHH) essentials website developed by the Health and Safety Executive in the UK http://www.coshh-essentials.org.uk/.</p>
3	<p>That consideration should be given to whether the <i>MOSHH ACOP</i> would be more effective if enacted as a regulation under HSE.</p>	OSH	<p>Medium term:</p> <p>This recommendation will be informed by the results of rec. 2 above. At this stage it is</p>

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4	<p>That consideration should be given to the introduction of requirements for the provision of MSDSs by way of regulation under HSE, pending HSNO requirements in that regard coming into force.</p>	<p>OSH/ ERMA</p>	<p>Immediate action taken: While supporting the intention behind this recommendation, OSH is of the view that the outcome would create confusion amongst manufacturers and suppliers of hazardous substances, and would not progress matters any faster.</p> <p>The Hazardous Substances (Identification) Regulations 2001 require suppliers of hazardous substances to provide Safety Data Sheets. A HSNO Code of Practice on the preparation of Safety Data Sheets is in the final stages of being approved. Suppliers will be required to develop Safety Data Sheets as hazardous substances are transferred to HSNO controls. As explosives and flammables have already transferred [28 August 2003 and 1 April respectively] and toxics will transfer on 1 July 2004, progress will be made faster under the HSNO regime than passing regulations under the HSE Act.</p> <p>OSH is working with ERMA to investigate the best means to make Safety Data Sheets readily available to small businesses and inspectors.</p>
5	<p>That OSH should review Regulation 67 of the Health and Safety in Employment Regulations 1995 with a view to clarifying the extent to which manufacturers and suppliers are obliged to provide information as to the safe use of plant and equipment on matters, such as local exhaust ventilation, required to operate that plant and equipment safely where the use of Hazardous Substances is intrinsic to that operation.</p>	<p>OSH</p>	<p>Medium term:</p> <p>OSH will provide advice to the Minister of Labour on options for reviewing regulations made under or saved by the HSE Act.</p> <p>Should such a review proceed, an examination of regulation 67 could be included.</p>

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6	<p>Identified as follows:</p> <p>Priority recs. (9, 11, 12, 14, and 18)</p> <p>Recs. with long-term significance (6, 21)</p> <p>That in the implementation of the injury-related information project under Part 8 of IPRC as it relates to occupational health issues, early consideration be given to supplementing that project, and the administrative databases upon which it is currently proposed to conduct that project, with a range of more specialised occupational health data collection initiatives, including ones designed to provide epidemiological information, and to those initiatives being undertaken separately from that project.</p>	DOL/ STATISTICS	<p>This report indicates what action will be taken and by when. Medium term = 2003/04 year. The initial progress report was issued in December 2003.</p> <p>This is version 2: issued June 2004 significant changes from the initial report are highlighted in yellow.</p> <p>Medium term:</p> <p><i>Information Manager</i></p> <p>The Department of Labour has undertaken a considerable amount of work on an occupational disease data set. This work was put on hold until the Information Manager had substantially established the "injury" database and was able to comment on the practicalities of incorporating disease data, or whether alternatives should be considered. OSH has written to the Information Manager to seek their comment on this recommendation.</p> <p>NOHSAC</p> <p>The National Occupational Health and Safety Advisory Committee has commenced a comprehensive review of New Zealand's occupational disease surveillance systems. More information on the Committee's work programme can be found at http://www.nohsac.govt.nz.</p>
7	<p>That a programme of research should be established to determine more accurately the incidence and prevalence of exposures to the hazardous substances, and other hazardous substances, in the health, printing and manufacturing sectors and the health consequences of those exposures.</p>	NOHSAC	<p>Completed:</p> <p>A copy of the Inquiry report has been sent to the National Occupational Health and Safety Advisory Committee. In August 2003 the Minister asked the Committee to provide independent advice on the report's recommendations, particularly those relating to research.</p> <p>Medium term:</p> <p>The first NOHSAC report (in October 2004) will be a review of the burden of fatal and non-fatal occupational disease and injury in New Zealand. Please see http://www.nohsac.govt.nz for details at that time.</p> <p>This review will play a key role in providing an independent assessment of the measures that would deliver the greatest benefit for the prevention of occupational</p>

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8	<p>That OSH should approach the subject of MCS as an occupational health issue by accepting the reality of the effects of MCS, by maintaining an actively open mind on the questions of the status and cause of MCS, and by emphasising the taking of all practicable steps to reduce the risks from exposure to the Hazardous Substances, and other hazardous substances, which are associated with the onset of, or which can trigger the symptoms of, MCS.</p>	<p>OSH ACC MSA CAA</p> <p>Health professions</p>	<p>Ongoing:</p> <p>OSH's Departmental Medical Practitioners and experts on the NODs panels accept that Multiple Chemical Sensitivity (MCS) is a real condition. Each diagnosis has to be made on a case-by-case basis. It should be noted that what a person believes and expects about their symptoms can have an effect on the subsequent course of health events.</p> <p>For a particular individual the exposures that provoke MSC may occur at many times below the OSH Workplace Exposure Standards (WES).</p> <p>The WES always acknowledges that some (a very few) sensitive people will suffer ill health effects from exposures well below the WES, as the WES is set to protect (only) the great majority of people.</p> <p>The Minister of Labour has asked (8 September 2003) the Minister for ACC to place the subject of multiple chemical sensitivity on the agenda of the Ministerial Advisory Panel on Work-Related Gradual Process, Disease and Infection for ongoing consideration.</p>
9	<p>That OSH should continue, and give extra emphasis to, its work to improve the NODS system, with particular reference to database issues and administrative support for the work of the NODS panels. OSH should, as soon as practicable, prepare a stock-take of the NODS system for you, including reporting on current problems relating to the NODS database and to administrative support for the NODS system. That stock-take should provide proposals for improvements to the NODS system in light of issues raised in this Report. OSH should incorporate into that stock-take comments from</p>	OSH	<p>Completed:</p> <p>Work on improving the NODs database was initiated in 2002 during the Inquiry. Since that time:</p> <ul style="list-style-type: none"> - a full-time NODs administrator has been appointed; and - the existing system has been reviewed and all individual files cleaned up. <p>Medium term:</p> <p>Further work is now underway on OSH's internal systems to support NODs. In particular the NODs database and the reports generated from the database are included in a comprehensive review of OSH data management. Substantial progress will be made on</p>

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	<p>members of the NODS panels on the issues discussed.</p>		<p>this review in the 2003/04 year.</p> <p>OSH is also currently undertaking a review of both the NODS notification system and the internal processes used to investigate notifications. The matters raised in the report will be addressed in this review. It is expected that this will result in improvements in the current system in the 2004.</p>
10	<p>That to complement, and encourage support of, the NODS system OSH should develop a regular programme to raise awareness of occupational health issues in the medical profession. That programme should include the distribution of information derived from the NODS system directly to the medical profession. OSH should consider working with ACC to give effect to this recommendation.</p>	OSH ACC	<p>Immediate action:</p> <p>OSH has asked ACC to consider this recommendation.</p> <p>Medium term:</p> <p>The NODs database and the reports generated from the database are included in a comprehensive review of OSH and ERS data management [Workinfo review].</p> <p>This will enhance our capacity to capture and analyse occupational illness data. It will enable regular updates to be issued to the medical community to actively promote the importance of how occupation can affect health. This, in turn, will reinforce our encouragement of medical practitioners to notify OSH of occupational disease.</p>
11	<p>That OSH should review and update the 1992 Glutaraldehyde Guidelines, and other information relating to the use of the Hazardous Substances in the health sector. That review should pay particular attention to the possibility of substitution, to the desirability of isolation, and to the necessity of fume hoods and local exhaust ventilation, and of appropriate spill management and staff information procedures.</p>	OSH	<p>Medium term:</p> <p>See comments on recommendation 12 below.</p>

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12	<p>That review should be undertaken in consultation with the health sector. Practical examples of how to implement best practice should be included in the updated guidelines; for example, how to achieve isolation and how to implement local exhaust ventilation. These should take account of current best practice exemplars. The updated guidelines should then be widely distributed to employers and employees in the health sector.</p> <p>That OSH should, following the distribution of the updated guidelines, audit the way in which exposure to the Hazardous Substances is being managed in the health sector, particularly in radiology, sterilisation and laboratory situations. OSH should ensure that appropriate attention is paid to smaller health work places as well as large ones.</p>	OSH	<p>Medium term:</p> <p>OSH has identified nine "Priority Areas" that will be the focus of its activity in the 2004/05 year. "Clean Air" and "Hazardous Substances" are priorities.</p> <p>Clean Air is a positive description for the outcome sought from this programme. It covers a variety of health hazards associated with impure air. These include solvents, dusts, hazardous fumes, asbestos and other contaminants. In particular the programme will cover the printing industry, the health sector, fibre-glassing, composite board manufacturers, fumigation processes and timber preservatives.</p> <p>Work in this area has been selected in response to the recommendations of the Hazardous Substances Inquiry.</p> <p>Information materials specific to certain aspects of clean air will be developed or revised.</p> <p>The information obtained on the management of Glutaraldehyde and its substitutes during this programme of work will inform a review of the guidelines.</p> <p>This programme will also flow into all sectors where OSH is undertaking other activities</p>

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			<p>(tailored to each sector's needs).</p> <p>This priority area links to OSH's work on the administration of the hazardous substances provisions of the HSNO Act. OSH has been designated as the lead enforcement agency for HSNO. Work will be carried out across all sectors that use hazardous substances of a high-risk nature, in many cases in conjunction with local authorities. The focus will be on enabling employers to meet their obligations under the HSNO Act and regulations, and in working with ERMA to develop hazardous substances information to assist small and medium-sized operators.</p>
13	<p>That OSH, whilst continuing to implement the 'industry-owned safety council' approach, should also ensure that it adopts a pro-active and lead role in the development and distribution of best practice guidance material.</p>	OSH	<p>Completed:</p> <p>In July 2003, OSH and ACC developed a joint position statement to clarify their interests in these groups. This statement was revised again in April 2004 and a copy can be found at http://www.osh.dol.govt.nz/order/catalogue/420.shtml.</p> <p>Ongoing:</p> <p>In this statement OSH indicated that, while it will continue to focus on generic guidance material, it will take the lead in developing industry-specific guidance material if it is not satisfied with progress being made by industry health and safety groups.</p>
14	<p>That, in conjunction with the research to be undertaken pursuant to Recommendation 6, OSH should review the terms of <i>MOSHH ACOP</i>, and other relevant codes of practice and guidance documents, with particular regard to:</p> <ul style="list-style-type: none"> the needs of small to medium-sized enterprises in the health, printing and 	OSH	<p>In regard to the <i>MOSHH ACOP</i> please see recommendation 2.</p> <p>In OSH's view, the implementation of this recommendation should be broadened to examine the best means of informing small to medium-sized enterprises on the safe use of hazardous substances.</p> <p>To this end:</p>

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	<p>manufacturing sectors where use of the Hazardous Substances is involved</p> <ul style="list-style-type: none"> experience in the UK with <i>COSHH Essentials</i>, and with the electronic availability of control guidance sheets <p>with a view to the <i>MOSHH ACOP</i> being supplemented by industry-specific initiatives in New Zealand which provide practical guidance similar to that provided by the <i>COSHH Essentials</i> control guidance sheets.</p>		<p>Immediate action taken:</p> <p>Meetings have been held with MfE, ERMA and the NZ Chemical Industries Council to discuss their intentions regarding information supporting the HSNO Act;</p> <p>Medium term:</p> <p>An examination of the best means of informing small to medium-sized enterprises, and employees is currently being undertaken. This includes consideration of the Control of Substances Hazardous to Health Regulations (COSHH) essentials website developed by the Health and Safety Executive in the UK http://www.coshh-essentials.org.uk/ and the opportunities that arise from the provision of training (particularly towards national qualifications) and the general provision of written materials.</p>
15	<p>That consideration be given to developing 'point of exposure' information for employees on key facts relating to the Hazardous Substances and associated risks and risk management issues. This information would be displayed on stickers and other sources of summary information that can be readily affixed, or displayed adjacent to relevant items of plant, machinery and equipment.</p>	OSH/ERMA	<p>Immediate action taken:</p> <p>This recommendation has been discussed with MfE, ERMA and the NZCIC to establish their intentions regarding information supporting the HSNO Act. To date draft codes of practice on Safety Data Sheets, Labelling and Signage have been developed by the NZ Chemical Industries Council and submitted to ERMA for approval as codes of practice under the HSNO Act.</p> <p>Medium term:</p> <p>Hazardous substances are being progressively transferred from existing legislation to the HSNO regime. Two significant classes of hazardous substance are being transferred in 2004. "Flammable" substances transferred on 1 April 2004 and "toxic" substance will transfer on 1 July 2004. This will make it possible to measure the effectiveness of the application of the Safety Data Sheets, Labelling and Signage requirements of the HSNO Act. OSH will monitor the application of these new duties to determine whether they</p>

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			meet the intent of this recommendation.
16	<p>That specific work be carried out within OSH on an ongoing basis to review available international information with a view to assessing its relevance to, and possible adaptation for use in, New Zealand.</p>	OSH	<p>Immediate action taken:</p> <p>OSH established the position of Project Manager – Knowledge Management in January 2003 to, amongst other things, better and sooner meet its customer needs and to promote customer self help. Consequently, among the Knowledge Management Programme Objectives are to:</p> <ul style="list-style-type: none"> ▪ identify information needs of internal and external customers; and ▪ develop policies and procedures for the collection, capture, organisation and sharing of information. <p>Ongoing action:</p> <p>This would include a review of how OSH might best use materials produced in other jurisdictions.</p>
17	<p>That, as part of its occupational health industry plan, OSH should review the series of audits of particular sectors that have already been carried out by it with a view to determining a systematic process for audit, involving:</p> <ul style="list-style-type: none"> • a process for identifying sectors for audit, which should pay particular attention to the issues of latency and individual sensitivity in occupational health issues • a pre-audit process, including a survey of the industry involved, undertaken in 	OSH	<p>Medium term:</p> <p>After a review of the strategies currently being carried out by OSH, activity is proposed during 2004/05 in the following areas:</p> <p>Priority Areas</p> <ul style="list-style-type: none"> ▪ Clean Air ▪ Manual Handling ▪ Stress and Fatigue ▪ Hazardous Substances ▪ Extractives

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	<p>consultation with relevant industry groups to provide clarification of issues to be focussed on during the audit and, where these do not already exist, best practice guidelines</p> <ul style="list-style-type: none"> • audit of issues identified against best practice guidelines • following audit, encouragement of appropriate employer/employee behaviour relative to those guidelines, involving over an appropriate period of time and on a transparent basis: <ul style="list-style-type: none"> - the use of informal advice - the use of improvement notices - the implementation of more formal enforcement methods 		<ul style="list-style-type: none"> ▪ Forestry ▪ Saw Milling ▪ Agriculture ▪ Construction <p>Special Topics</p> <ul style="list-style-type: none"> ▪ Noise ▪ Asbestos ▪ Violence in the Workplace ▪ Occupational Illness Notification ▪ Road Transport ▪ Employee Participation ▪ Electricity and Gas
18	<p>That given the information already available, OSH should audit the printing and boat-building industries on the basis identified in Recommendation 17</p>	OSH	(see recommendation 17 above – part of Clean Air priority area)
19	<p>That OSH review its use of the term 'best practice' where referring to preferred or recommended ways of achieving HSE compliance.</p>	OSH	<p>Medium term:</p> <p>OSH will review its use of "best practice".</p>
20	<p>That, notwithstanding the desirability of the promotion of excellence and the adoption of absolute best practice in occupational health matters, greater emphasis should be placed, particularly in small to medium-sized enterprises, on the more fundamental need to</p>	OSH	<p>Ongoing action:</p> <p>Advice contained in codes of practice and guidelines will align to the "all practicable steps" standard of the HSE Act.</p>

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	<p>ensure the adoption of best practice in the sense given to that term by this Inquiry; that is, practice commensurate with the 'all practicable steps' standard.</p>		
21	<p>That OSH should review its current enforcement policy – particularly as regards section 7 of HSE - with a view to taking better account of the issues of latency, and the inherent difficulties of cause and effect, associated with occupational health issues. OSH should explicitly acknowledge that proactive enforcement action focusing on system failure or inadequacy, including by way of infringement notices and prosecutions, may be appropriate even where:</p> <ul style="list-style-type: none"> • there is no specific instance of the occurrence of an illness or injury, or • although there has been a specific instance of the occurrence of an illness or injury, there may be difficulties in establishing the cause of that illness or injury. 	OSH	<p>Medium term:</p> <p>The enforcement of section 7 of the HSE Act will be enhanced with the introduction of the Infringement Notice regime. This specifically provides for an infringement fee of not less than \$800 and not more than \$4000 for a breach of S 7(1). An operational policy has been developed to give guidance to HSE inspectors on the application of infringement notices. HSE inspectors have been trained and are now able to issue infringement notices.</p> <p>How infringement notices and/or prosecutions might best be used to promote compliance with S 7(1) will be informed by the development of a "compliance strategy" that is in development.</p> <p>In regards to the question of latency the Health and Safety in Employment Amendment Act 2002 made changes to allow an inspector to start the proceedings in the District Court within 6 months of the Department of Labour <u>finding out about the offence</u>, or within 6 months of when they should have found out about it (e.g., where there was sufficient media coverage that the Department should have been aware). Previously the HSE Act required an inspector to take action within 6 months of a breach occurring, which had a significant impact on an inspector's ability to take any action when the latency period of an illness was such that harm did not become apparent for some time.</p> <p>It should be noted that OSH:</p> <p>(a) has always used enforcement action as a proactive tool to address systems failures in order to prevent harm; and</p> <p>(b) an inspector is not required to link a breach of legislation to a resultant harm before</p>

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The Department of Labour's progress towards the fulfilment of the recommendations

	Recommendations	Agency	Action Report
	<p>Identified as follows:</p> <p>Priority recs. (9, 11, 12, 14, and 18)</p> <p>Recs. with long-term significance (6, 21)</p>		<p>This report indicates what action will be taken and by when. Medium term = 2003/04 year. The initial progress report was issued in December 2003.</p> <p>This is version 2: issued June 2004 significant changes from the initial report are highlighted in yellow.</p>
			<p>an enforcement action is possible.</p>
22	<p>That you refer this Report to the National Occupational Health and Safety Advisory Committee for their information and consideration and invite the Committee to consider whether they may wish to respond to research initiatives recommended in this Report.</p>	Minister of Labour	<p>Completed:</p> <p>A copy of the Inquiry report has been sent to members of the Committee [sent 25 July 2003] and the Minister requested (27 August 2003) that the Committee provide independent advice on the report's recommendations.</p>
23	<p>The Inquiry therefore recommends that, when the gradual process panel ('the Panel') is established, you invite your colleague the Minister for ACC to:</p> <ul style="list-style-type: none"> • request that the Panel review glutaraldehyde, other aldehydes and solvents for inclusion in Schedule 2 of IPRC, at least to the extent of the traditionally recognised effects of dermatitis, rhinitis, and asthma, and perhaps also to the extent of neurotoxicity • request that the Panel place the subject of multiple chemical sensitivity on the agenda of the Panel for ongoing consideration. 	Minister of Labour	<p>Completed:</p> <p>The Minister of Labour has liaised with the Minister for ACC who in turn has written to the chair of the panel to give effect to this recommendation.</p> <p>Medium term:</p> <p>OSH has asked ACC to provide OSH with feedback in respect of the panel's progress in considering this recommendation.</p>