



MEMORANDUM

To: Decision making committee to decide HSNO application APP202142
From: Myregel Carambas, Senior Legal Advisor, Environmental Protection Authority
Date: 26 February 2015
Subject: Scope of regulation 49 of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001

Scope of regulation 49 of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001

1. The DMC has posed a question about the scope of regulation 49 of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 ("the Regulations") and whether the word "bees" applies to all "bees" (including native bees, honey bees and bumble bees) or whether regulation 49 has limited application to "honey bees" only.
2. Resolution of this question is relevant for determining the scope of the current control that is the subject of this reassessment. The current control that relates to bees is regulation 49 of the Regulations which provides:

49 Use of substances ecotoxic to terrestrial invertebrates

 - (1) A person must not apply a class 9.4 substance in an application area—
 - (a) if bees are foraging in the area and the substance is in a form in which bees are likely to be exposed to it; or
 - (b) to any plant or tree that is likely to be visited by bees if—
 - (i) the plant or tree is in open flower or part bloom; or
 - (ii) the plant or tree is likely to flower after application of the substance within a period specified by the Authority.
 - (2) The period specified by the Authority must not be longer than 10 days.
3. For present purposes, the current controls do not impose non-contact periods and the application proposes the imposition of non-contact periods.
4. The starting point for any statutory interpretation is s 5 of the Interpretation Act 1999 which provides that "the meaning of an enactment must be ascertained from its text and in the light of its purpose".
5. In my view, the text of the enactment supports a conclusion that the term "bees" encompasses all bees and is not limited to honey bees. There are no other statutory indicators to suggest that a narrow approach should be applied, rather, the statutory context suggests that a broad approach should be applied. As an example, there is no definition of the word "bees" in the regulations or the Act and on that basis, the natural and ordinary meaning of the word applies.
6. In addition the statutory language used in the empowering provision is permissive and broad relating to "adverse effects of any exposure"

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7. The purpose and principles of HSNO also support a 'broad' interpretation. As an example, the purpose of HSNO is to "protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances". "Environment", is broadly defined to include "ecosystems" and the definition of "effects" is likewise broadly defined. To apply a narrow approach could arguably be said to be inconsistent with the approach because, in the absence of additional controls, native bees and bumble bees would be afforded a lesser level of protection than honey bees.
 8. The intention of the DMC at the time of the decision also assists in determining the scope of the original controls. There is no indication in that decision that suggests that the control was imposed to address or 'protect' honey bees only.
 9. For the reasons above, I consider that the current control that relates to bees is one that relates to bees in a generic sense as opposed to a particular type of bee.

Signature



Date

26/02/2015