

Vertebrate Toxic Agent Permissions Audit Report

MidCentral District Health Board
Public Health Service

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Environmental
Protection Authority
Te Mana Rauhi Taiao

New Zealand Government

The audit was conducted on 25 June 2019. A sample of vertebrate toxic agent permissions was audited. The findings identified in this audit are limited to the audited permissions only.

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Executive summary

The Environmental Protection Authority (EPA) approves hazardous substances under the Hazardous Substances and New Organisms Act 1996 (HSNO Act), including substances classed as vertebrate toxic agents (VTAs).

The EPA imposed additional controls with respect to certain VTAs under s77A of the HSNO Act requiring a person to obtain a permission under section 95A of the HSNO Act before using those VTAs.

On 23 March 2016, the EPA delegated the power under s95A of the HSNO Act to grant, revoke, and add, delete or otherwise vary any condition of a permission to use certain VTAs in a catchment area from which water is drawn for human consumption or in any other area where a risk to public health may be created if the substance is applied or used. This is delegated to medical officers of health and health protection officers who are appointed as enforcement officers under the HSNO Act¹. They are employed in public health units in district health boards (DHBs)².

On 25 June 2019, the EPA audited the exercise of this delegation to medical officers of health and health protection officers appointed as enforcement officers. They are employed at the MidCentral DHB's public health unit.

The purpose of this audit was to check compliance with the various instruments in force in relation to VTA permissions.

The audit identified three non-conformities with the exercise of the Instrument of Delegation. These relate to:

- granting permissions without corresponding applications
- completing a risk assessment for every permission granted, and including the reasons for selecting conditions in those risk assessments
- demonstrating that all permissions have been audited.

MidCentral Health's Public Health Service, Te Pae Hauora o Ruahine, o Tararua Hauora mō te Iwi (MidCentral Public Health) sends self-audit checklists to permission holders and receives them duly completed. However, it does not document its own assessment of permission holders' compliance with the conditions of their permissions.

The auditors found many examples of good practices implemented by MidCentral Public Health. This included the level of detail included in their aerial 1080 audit reports.

MidCentral Public Health also has many areas where it could make the process of granting VTA permissions more robust. This includes filing systems and providing clarity to permission holders when customising permission conditions.

The EPA expects MidCentral Public Health to take actions to comply with the Instrument of Delegation and other key documents that support the VTA permission process. The EPA will work with MidCentral Public

¹ See Instrument of Delegation.

² See www.health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/public-health-units

Health to agree on an action plan that the public health unit must implement to address the findings of the report.

Key findings

Table 1 summarises the non-conformities identified during the audit and the outcomes the EPA expects the MidCentral Public Health to be compliant with key documents that support the granting of VTA permissions.

Table 2 summarises the observations identified during the audit. Further details of the findings are addressed in the Audit findings section.

Table 3 lists opportunities for improvement.

Table 1: Non-conformities

Number	Brief description	Requirement
Policies and procedures		
NC 1	Two permissions were granted without a corresponding application.	A new application must be submitted for each permission granted.
Risk assessment		
NC 2	Risk assessments could not be located for four sampled permissions and the risk assessment sighted did not include the reasons for the inclusion of conditions.	A risk assessment must be completed for every permission granted that details the reasons for setting, amending or modifying conditions included in the permission.
Monitoring and audit of permissions and permission processes		
NC 3	There was no evidence to demonstrate that verification of the self-audit checklists that form the enforcement officers' desktop audit was completed.	Enforcement officers will audit each permission.

Table 2: Observations

Number	Description	To be addressed by
Access to key documents		
Obs 1	Not all enforcement officers had access to a copy of the Instrument of Delegation.	MidCentral Public Health
Amendments to key documents		
Obs 2	MidCentral Public Health standard operating procedures were not approved by the public health unit.	MidCentral Public Health
Officer training and warranting		
Obs 3	Evidence of appointment lists enforcement officers' powers under s103 of the HSNO Act instead of s103A HSNO Act.	Ministry of Health
Policies and procedures		
Obs 4	MidCentral Public Health processes for issuing VTA permissions were not always followed by the enforcement officers.	MidCentral Public Health
Obs 5	The standard operating procedure <i>VTA Application for Permission Procedure</i> did not refer to the timeframe to provide the EPA with a copy of the granted permission.	MidCentral Public Health
Risk assessment		
Obs 6	Insufficient documentation existed to justify assessment of aerial 1080 applications in accordance with <i>Communications Guideline for Aerial 1080 Operations</i> (2009).	MidCentral Public Health
Signage		
Obs 7	No inclusion or monitoring of permission conditions related to signage due to a lack of clarity around who is responsible for signage.	MidCentral Public Health

Table 3: Opportunities for improvement

Number	Brief description	To be addressed by
Opp 1	Information to support and justify the decision-making for permission could not be easily located.	MidCentral Public Health
Opp 2	Permission conditions need to be specific and clear to the permission holder.	MidCentral Public Health
Opp 3	MidCentral Public Health wished to clarify the level of audit required by the Instrument of Delegation.	EPA
Opp 4	There are limited internal safeguards in place to ensure that enforcement officers act within their delegated authority.	MidCentral Public Health
Opp 5	Application forms are designed for aerial 1080 applications and are not fit for purpose for ground-based operations.	EPA
Opp 6	The HSNO Act warrants ³ do not include the power to issue compliance orders.	Ministry of Health

³ HSNO Act enforcement officer's warrant of appointment which specifies the powers available to the enforcement officer

Introduction

Legislative background

The EPA has the power to approve hazardous substances under the HSNO Act. As part of this process, the EPA has approved a number of substances which are classed as Vertebrate Toxic Agents (VTAs).

In certain cases, the EPA has also imposed additional controls with respect to VTAs⁴, requiring a person to obtain a permission under section 95A of the HSNO Act prior to using those substances.

Delegation

Under the HSNO Act, the EPA may delegate its powers under s95A of the HSNO Act to other persons. On 23 March 2016 the EPA delegated specific powers with respect to a limited number of VTAs to medical officers of health and health protection officers appointed as enforcement officers under the HSNO Act.

The delegation allows enforcement officers:

- “(i) to grant a permission;
- (ii) to add, delete or otherwise vary a condition on a permission;
- (iii) to revoke a permission”

for the use of a number of specified VTAs “in a catchment area from which water is drawn for human consumption or in any other area where a risk to public health may be created if the substance is applied or used”.⁵

Cooperation between the EPA and the Ministry of Health

The EPA and the Ministry of Health entered into an Operational Agreement on 4 May 2016 that detailed the responsibilities of each party in relation to the delegated powers. Under the Operational Agreement:

- the Ministry of Health is required to provide enforcement officers with information, advice, tools and training to enable them to discharge their VTA permissions responsibilities under the HSNO Act⁶
- enforcement officers are required to give full consideration to the *Communications Guideline for Aerial 1080 Operations*⁷ prior to granting permissions for the aerial use of 1080.⁸

Public health units in DHBs implement the policy and statutory responsibilities of the Ministry of Health at a local level under the HSNO Act.⁹ The Ministry of Health’s *Environmental Health Protection Manual* (the Manual) provides guidance on granting VTA permissions and training required for enforcement officers.

⁴ Under s77A of the HSNO Act.

⁵ See Instrument of Delegation.

⁶ Paragraphs 3.6 and 4.2.1 of the Operational Agreement.

⁷ <https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/Guidance/4569c19e32/1080-Communications-Guidelines.pdf>

⁸ Paragraph 4.2.6 of the Operational Agreement.

⁹ Introduction, the Manual, p 8.

Rationale for the EPA audit

The EPA undertakes audits to monitor the exercise of the powers delegated under the Instrument of Delegation by the enforcement officers, and to assess the support provided by the public health unit and the Ministry of Health to enforcement officers, as part of the process.

Scope of audit

The scope of the audit consisted of checking for compliance with s95A of the HSNO Act and the Instrument of Delegation.

The audit comprised:

- assessing a sample of permissions, issued by the enforcement officers at MidCentral DHB, for compliance with the requirements of s95A of the HSNO Act¹⁰
- appraising conditions imposed on permissions, amendments to Model Permit Conditions and any notices of revocation
- examining audits (desktop and/or field based) undertaken by the enforcement officers following VTA operations
- reviewing conditions regarding signage, ordinarily used to protect public health by advising the public of VTA operations, including monitoring and enforcement of such conditions
- assessing the compliance of key processes in the granting of VTA permissions
- Identifying any opportunities for MidCentral Public Health, the Ministry of Health and the EPA to improve the process for granting VTA permissions.

Date of audit

This audit was conducted on 25 June 2019. Findings were discussed with MidCentral Public Health at the end of the audit.

Follow-up from the audit

MidCentral Public Health was provided a draft copy of this report and the opportunity to make any factual comment. Their feedback has been incorporated into this final report. This report documents the findings of the audit, classifying issues as non-conformities and observations.

This audit report will be provided to MidCentral Public Health and the Ministry of Health.

Enforcement officers at MidCentral Public Health will provide the EPA within 15 working days of the issue of the report with a proposed action plan that addresses the findings. The action plan will be agreed by the EPA and accepted once satisfactory. It is expected to be implemented within the specified timeframes in the agreed action plan. The plan should include the required improvements to ensure that the MidCentral

¹⁰ This included compliance with the Instrument of Delegation, The Guidelines, MidCentral Public Health procedures and The Manual.

Public Health VTA permission process is improved and that non-conformities identified in this report do not reoccur.

This audit has raised wider systems issues in relation to the granting of VTA permissions which require clarity or more support to ensure consistency. These matters are outside the MidCentral Public Health's control. They will be discussed and actioned by the Ministry of Health (Obs 3 and Opp 6) and the EPA (Opp 2 and 5).

Basic audit data

Audit date	25 June 2019
Audit period	28 March 2018 to 15 March 2019
Permissions audited by EPA	6
Applications made to MidCentral Public Health*	85
Permissions granted*	85
Permissions declined*	0
Permissions revoked*	3
Permissions withdrawn*	1
Permissions audited by enforcement officers*:	71
• Desktop audit*	70
• Field audit*	1

* Self-reported data from MidCentral Public Health

Permissions sampled

Six permissions were sampled. The permissions were chosen to include VTAs such as aerial and ground-based sodium fluoroacetate (1080) and potassium cyanide operations.

No	Application identification code	Operation name	Date granted
1	18/455/BIM/PNPH	Northern Horowhenua DOC Reserves	28 March 2018
2	18/458/ACW/PNPH	Oraua	12 July 2018
3	18/478/BIM/PNPH	Te Apiti Manawatu Gorge Biodiversity Project	16 October 2018
4	18/479/BIM/PNPH	Te Apiti Manawatu Gorge Biodiversity Project North	5 December 2018
5	18/490/BIM/PNPH	Te Apiti Manawatu Gorge Biodiversity Project South	6 December 2018
6	19/7/BIM/PNPH	Northern Horowhenua DOC Reserves	15 March 2019

Audit findings

Key documents

The key documents that support the exercise of the delegation are as follows:

Document	Author	Date
Hazardous Substances and New Organisms Act 1996		
Instrument of Delegation	EPA	23 March 2016
Approved Application form [version 5]	EPA	14 June 2018
Approved permission form [version 5]	EPA	14 June 2018
Communications Guideline for Aerial 1080 Operations	ERMA	March 2009
Operational Agreement	Ministry of Health and the EPA	4 May 2016
Application of Model Permit Condition for VTAs and other Hazardous Substances	Ministry of Health	June 2018
Issuing Permissions for the Use of Vertebrate Toxic Agents (VTAs) Guidelines for Public Health Units (The Guidelines)	Ministry of Health	March 2013
Environmental Health Protection Manual [version 12]	Ministry of Health	October 2018
VTA Application for Permission Procedure	MidCentral Public Health	November 2018
VTA Audit Procedure	MidCentral Public Health	November 2018

Process

The basic process to assess applications for permissions for the use of VTAs specified in the Instrument of Delegation, based on the key documents listed above, is as follows:

- applications for permissions to use the VTAs specified in the Instrument of Delegation are made on EPA-approved forms¹¹
- the applications are lodged with the local public health unit, with one application submitted for each permission sought¹²
- any missing or additional information is requested by the enforcement officer who processes the application¹³

¹¹ Section 95A HSNO Act and clause 2 of the Instrument of Delegation.

¹² Section 95A HSNO Act and The Guidelines

¹³ Receipt of the application, clause 3.1 standard operating procedure *VTA Application for Permission Procedure*, p 7.

- the application is assessed by an enforcement officer who prepares a risk assessment¹⁴, determining conditions required and the reasons for the proposed conditions¹⁵
- permissions for all aerial VTA operations and any other significant or contentious ground-based operations should be peer reviewed by another enforcement officer¹⁶
- the final permission is signed off by an enforcement officer¹⁷
- the permission is issued in a form approved by the EPA¹⁸ and is provided to the applicant¹⁹
- the permission must be provided to the EPA within 20 working days of the date of issue²⁰
- every permission will be audited by an enforcement officer²¹, either through a field audit or a desktop audit²²
- non-compliances, complaints and incidents associated with permission conditions are to be recorded by enforcement officers and actions taken including enforcement action, if necessary.²³

¹⁴ Clause 4 of the Instrument of Delegation. Assessing the application, clause 3.2 standard operating procedure *VTA Application for Permission Procedure*, p 8.

¹⁵ Clause 4(b) of the Instrument of Delegation. Assessing the application, clause 3.2 standard operating procedure “VTA Application for Permission Procedure”, p 8.

¹⁶ Peer review, clause 3.3.1 standard operating procedure *VTA Application for Permission Procedure*, p 8.

¹⁷ Instrument of Delegation.

¹⁸ Section 95A(6) HSNO Act.

¹⁹ Issuing the application, clause 3.3 standard operating procedure *VTA Application for Permission Procedure*, p 8.

²⁰ Clause 7 of the Instrument of Delegation.

²¹ Clause 6 of the Instrument of Delegation. Point 2 under Responsibilities and roles, standard operating procedure *VTA Audit Procedure*, p 4.

²² The Guidelines, pp 29-30.

²³ Enforcement officers’ powers under a warrant (section 103A HSNO Act); clauses 3.5 and 4.2.7 of the Operational Guidelines; the enforcement officers’ role, as described in The Guidelines, p 19; section 11 - Introduction, p 8; section 11.4, p 12; section 11.8.5, p 26 The Manual; enforcement, Complaints and incidents, clause 3.7 standard operating procedure *VTA Application for Permission Procedure*, p 9.

Access to key documents

Obs 1: Not all enforcement officers had access to a copy of the Instrument of Delegation

All of the key documents referred to above, except for the Instrument of Delegation, could be accessed by the auditors during the audit. Some of the enforcement officers did not have a copy of the Instrument of Delegation and were not sure where this was kept.

MidCentral Public Health has developed and implemented standard operating procedures to support enforcement officers to carry out their duties in regards to VTA permissions. All enforcement officers could access the MidCentral Public Health standard operating procedures *VTA Application for permission procedure* and *VTA Audit Procedure* from their on-site computer system.

Amendments to key documents

Enforcement officers advised that they raise any issues with the standard operating procedures with each other. These are reviewed by the enforcement officers who issue VTA permissions. The Ministry of Health provides updates and key messages to MidCentral Public Health via a newsletter. Relevant changes are implemented through the standard operating procedures.

Obs 2: MidCentral Public Health standard operating procedures were not approved

The auditors noted that the standard operating procedures do not include the name or the job title for the person who has approved them for use. The standard operating procedures do not specify the date of the next review. The standard operating procedures were reviewed in November 2018 with some key amendments, such as the new Appendix 2: VTA Risk Assessment Form.

Additional policy

MidCentral Public Health also has a conflict of interest policy, which is available to staff via the intranet. Health protection officers (including enforcement officers) have a code of conduct. If a conflict of interest arises, they are required to declare and document it with their manager.

Exercise of powers

The power to consider an application for, and grant permission to use, various VTAs in specific circumstances under s95A of the HSNO Act, has been delegated by the EPA to medical officers of health and appointed as enforcement officers under the HSNO Act.

The auditors examined the EPA database for VTA permissions and noted that all permissions issued by MidCentral Public Health from 28 March 2018 to 15 March 2019 were granted by three enforcement officers. All sampled permission were granted by enforcement officers who worked in the Palmerston North office.

MidCentral Public Health has a HSNO Operational Plan 2018–2019 that includes a note that, “VTA permissions can only be signed by a warranted HSNO enforcement officer”. The HSNO operational plan includes the key performance indicators for the public health unit.

Not all permissions are peer reviewed, which means there is potential for permissions to be issued by persons who do not hold the proper authority. No additional controls were set in place to ensure that only authorised HSNO officers issue VTA permissions.

Officer training and warranting

Hazardous substances training must be completed by each enforcement officer every three years to retain a HSNO Act warrant.²⁴ If training is incomplete, the Ministry of Health considers revoking the warrant.

The managers of each public health unit are required to provide the Ministry of Health with an annual summary of training and qualifications for each enforcement officer to verify their competency.²⁵ This includes current statutory appointments and completion dates for the Hazardous Substances Foundation and Refresher training courses.

There are six warranted HSNO Act enforcement officers employed by MidCentral Public Health. Evidence of warranting and certificates of the last HSNO foundation or refresher course was provided during the audit for each of the six officers. MidCentral Public Health stores copies of HSNO warrants in individual personnel files in their computer system. These were easily accessible during the audit.

Obs 3: Evidence of appointment lists enforcement officers' powers under s103 of the HSNO Act instead of s103A

All HSNO Act warrants of appointment issued by the Director-General of Health were viewed during the audit. Enforcement officers appointed by the Director-General of Health were appointed under s100(3) of the HSNO Act. However, the warrants referred to s103 of the HSNO Act (Powers of entry for inspection relating to new organisms), rather than s103A of the HSNO Act (Powers of entry for inspection relating to hazardous substances). The HSNO Act was amended on 1 December 2017 where s103 was amended from "Powers of entry for inspection" to "Powers of entry for inspection relating to new organisms". All warrants should be amended to refer to the correct section of the HSNO Act, being s103A of the HSNO Act.

Policies and procedures

The auditors observed an example of good practice at MidCentral Public Health where enforcement officers highlighted areas of importance to applicants. For example, there was evidence of letters and emails highlighting specific conditions and recommendations for the permissions granted. For the Manawatu Gorge South permission,²⁶ the correspondence highlighted the duration of the permission and specific conditions such as the restriction that 1080 cannot be applied during or within 24 hours of the start of school holidays, public holidays or public holiday weekends. It also highlighted signage recommendation and noted that signage requirements were with WorkSafe.

NC 1: Two permissions were granted without a corresponding application

The HSNO Act requires that an application be made for a permission under s95A of the HSNO Act. The Guidelines, similarly, require that "a fresh application should be submitted every time that a new

²⁴ Section 11.2.2, p 10 The Manual.

²⁵ Appendix 1: 2018-19 Hazardous Substance Action Plan, Environmental Health Protection Manual, Version 12, page 60.

²⁶ Permission 18/490/BIM/PNPH

permission is issued” and that “a new application is required even if an operation is continuous”.²⁷ This is to ensure the enforcement officer has assessed whether there have been any changes which may affect conditions imposed.

The auditors found that:

- the application used for one permission²⁸ was also used to grant the re-issued permissions²⁹ where the permission holder requested more time to complete the operations. The operational areas were split and specific conditions were added. Therefore, three permissions were issued from one application
- the application used for the Te Apiti Manawatu Gorge Biodiversity Project permission³⁰ was used to grant the new permissions³¹ to split the operational area to north and south of Manawatu Gorge
- no evidence of risk assessments for four re-issued permissions.³²

Obs 4: MidCentral Public Health processes for issuing VTA permissions were not always followed by enforcement officers

The auditors identified inconsistencies with procedures outlined in the MidCentral Public Health standard operating procedure *VTA Application for Permission Procedure* These are listed below:

- The standard operating procedure³³ requires that application details be recorded in the VTA application register. MidCentral Public Health’s Palmerston North office uses an Excel database to record applications details including the identifying number for the operation. The standard operating procedure states “each operation has its own unique number”. One permission³⁴ was granted with the same number – 479 – as another permission³⁵ granted by another enforcement officer. This is an error in the numbering of permissions.
- Appendix 2 of the standard operating procedure includes the VTA Risk Assessment form, which did not include an area to list the MPCs selected for each permission.

Obs 5: The standard operating procedure *VTA Application for Permission Procedure* did not refer to the timeframe to provide the EPA with a copy of the granted permission.

The auditors identified a discrepancy in the standard operating procedure *VTA Application for Permission Procedure* and the Instrument of Delegation. The standard operating procedure did not include the

²⁷ Chapter 4: Risk Management - New application required in all cases before granting a permission, The Guidelines, page 26.

²⁸ Permission 18/455BIM/PNPH

²⁹ Permission 19/7/BIM/PNPH and 19/6/BIM/PNPH

³⁰ Permission 18/478/BIM/PNPH

³¹ Permission 18/479/BIM/PNPH and 18/490/BIM/PNPH

³² Permissions 19/7/BIM/PNPH, 18/455/BIM/PNPH, 18/479/BIM/PNPH and 18/490/BIM/PNPH

³³ Receipt of the application, clause 3.1 *VTA Application for Permission Procedure*.

³⁴ Permission 18/479/BIM/PNPH

³⁵ Permission 18/479/ACW/PNPH

timeframe for sending the permissions to the EPA. The Instrument of Delegation clause 7³⁶ states that the permission must be provided to the EPA within 20 working days of the date of issue.

The sampled permissions were confirmed to be provided to the EPA within 20 working days of issue. Emails to the EPA and the confirmation of receipt from the EPA were confirmed to be filed in the on-site computer system. This is compliant with the Instrument of Delegation.

The standard operating procedure *VTA Audit Procedure* should consider including a template to enable the enforcement officer to assess the self-audit checklist against the response received from operators. This would enable the enforcement officers to comply with the Instrument of Delegation requirement to audit all permissions.

Risk assessment

NC 2: Risk assessments could not be located for four sampled permissions and the risk assessments sighted did not include the reasons for the inclusion of conditions.

The Instrument of Delegation requires that a risk assessment be completed and records retained for every permission granted which details the reasons for setting, amending or modifying any condition(s) included in the permission³⁷.

Four permissions³⁸ were granted for operations that were ongoing or had not gone ahead. There were no risk assessments associated with the four newly granted permissions where the applicant requested the permissions to be split based on north and south operational areas. These were considered to be straightforward by the enforcement officer and any changes were documented in the enforcement officer's notebook, in emails with the applicant or with their medical officer of health, however, there was no formal risk assessment completed when granting these permissions.

The risk assessment for one permission³⁹ was not available. The enforcement officer stated that risk assessment was handwritten, completed in February 2018, not scanned at the time and therefore may have been lost.

Based on the requirements of standard operating procedure *VTA Application for Permission Procedure*, both the *VTA Application Coversheet* and the *VTA Risk Assessment* form should be completed when assessing the application. Risk assessments were sighted for two out of the six sampled permissions⁴⁰.

For another permission⁴¹, the risk assessment included only the *VTA Application Coversheet* and did not contain reasons for the inclusion of Model Permit Conditions (developed by the Ministry of Health and included in the Guidelines). There were comments around the risks with this permission including public

³⁶ Clause 7 of the Instrument of Delegation.

³⁷ Clause 4(b) of the Instrument of Delegation.

³⁸ Permissions 19/6/BIM/PNPH, 19/7/BIM/PNPH, 18/479/BIM/PNPH and 18/490/BIM/PNPH

³⁹ Permission 18/455/BIM/PNPH

⁴⁰ Permission 18/458/ACW/PNPH and 18/478/BIM/PNPH.

⁴¹ Permission 18/458/ACW/PNPH

access to a campsite near the operational area. However the auditors raised concerns that there were no signage conditions for this permission despite increased public use of a campsite within the area during the Christmas period. Signage conditions were not specified at all for this permission due to a Ministry of Health instruction to no longer include signage conditions.

The risk assessment for the Te Apiti Manawatu Gorge Biodiversity Project permission⁴² documented all the identified risks with the operation including drinking water supplies and the actions to take, conditions to amend to suit the risks e.g. buffer zones, but it did not include the selected MPCs. The application was for the period from March 2018 - March 2019, but the approval was granted for the period from 16 October - 6 December 2018 so as to avoid school holidays. Decision justification to grant a permission with a shorter timeframe than the requested timeframe was recorded in a notebook containing discussions between the enforcement officer, their medical officer of health, and the Department of Conservation. The enforcement officer did not include signage controls but did include a recommendation about signage in an email to the applicant.

Justification around the inclusion of MPCs is particularly important for aerial 1080 permissions and it is considered best practice to document reasons for the exclusion and inclusion of MPCs, as applicable.

Obs 6: Insufficient documentation existed to justify assessment of aerial 1080 applications in accordance with the *Communications Guideline for Aerial 1080 Operations (2009)*.

Under the Operational Agreement, the Ministry of Health is responsible for requiring enforcement officers to give full consideration to the provisions of the *Communications Guideline for Aerial 1080 Operations (2009)* (Communications Guideline) prior to granting permissions for the aerial use of 1080.

Enforcement officer's advised that, as a matter of practice, they assess applications for aerial 1080 against the Communications Guideline.

It was observed that for aerial 1080 applications, the *VTA Application Coversheet* did not prompt the enforcement officer to assess the application against the Communications Guideline or to consider the applicant's communication plans. The enforcement officers do not record whether they have checked the adequacy of the consultation.

It is noted that in the Te Apiti Manawatu Gorge Biodiversity Project permission, a landowner was not consulted as they were overseas⁴³. The enforcement officer stated that he wanted confirmed contact with the landowner and emailed the applicant to follow up on the consultation. However, the enforcement officer could not recall if there was any further communication from the applicant regarding this consultation. Any communication between the applicant and the enforcement officer regarding consultation should be documented.

Enforcement officers should also document their assessment of the communication plans against the Communications Guideline. For example, the enforcement officers may verify that the applicant has consulted with the appropriate members of the community and that the consultation was sufficient to meet the Communications Guideline. Documenting this assessment would ensure transparency in decision-making and contribute to the public's confidence that the matter was thoroughly considered.

⁴² Permission 18/478/BIM/PNPH

⁴³ Application form for permission 18/478/BIM/PNPH p 24.

Monitoring and audit of permissions

The Instrument of Delegation⁴⁴ requires enforcement officers to audit each permission and document the decision to undertake a field or desktop audit.

MidCentral Public Health audits all aerial 1080 permissions and sends a self-audit checklist for all ground-based VTA permissions. The rationale for the type of audit conducted for aerial 1080 permissions was documented on the *VTA Audit Checklist Coversheet*, and the rationale for selecting a desktop audit for ground operation was included in the standard operating procedure *VTA Audit Procedure*.

There were no self-audit checklists and audit reports available for the sampled permissions, as the operations had either not begun or were not completed at the time of the audit.⁴⁵

Enforcement officers stated that they conduct field audits for all aerial 1080 operations, and in some cases would perform an on-site check of the operational area prior⁴⁶ to granting a permission⁴⁷. The auditors sighted photographs of the operational area that supported the enforcement officer's process to recommend signage and set appropriate conditions to manage the risks.

Audit reports from previous operations were viewed by the auditors.

The aerial *VTA Audit Checklist Coversheet* was viewed for three aerial 1080 operations⁴⁸.

The *VTA Audit Checklist Coversheets* were completed by the enforcement officer. The auditors saw evidence of:

- field audits – on-site photographs, an assessment of the loading site
- verification of consultation/notification, verification of public notification, signage and compliance with permission conditions
- the Differential Global Positioning System (DGPS) Flight Line Map
- notification email
- log report
- audit outcome letter.

The auditors observed an example of good practice at MidCentral Public Health where aerial 1080 audits completed and documented by enforcement officers were detailed' comprehensive' and contained summaries of the overall findings with deficiencies observed and any actions required by the permission holder. Enforcement officers provide permission holders with an audit outcome letter with the findings of the audit.

NC 3: There was no evidence to demonstrate that verification of the self-audit checklists that form the enforcement officers' desktop audit was completed.

⁴⁴ Clause 6 of the Instrument of Delegation

⁴⁵ Permission 17-033-CEN-ROTPH, permission 18-013-CEN-ROTPH and permission 19-002-CEN-ROTPH

⁴⁶ Permission 18/478/BIM/PNPH

⁴⁷ Permission 18/478/BIM/PNPH

⁴⁸ Permissions 15/305/BIM/PNPH, 18/02/MMT/WGPH and 17/02/MMT/WGPH

Enforcement officers include an additional permission condition titled “Checklist” for desktop audit purposes of ground operations. The condition states “the enclosed checklist must be completed and forwarded to the HPO at the PHS within one month after the completion of the ground control operation”. This self-audit checklist requires the permission holder (or another person on the permission holder’s behalf) to advise whether the operation had met the permission conditions regarding notifications, excluded areas, domestic drinking water supplies, public drinking water supplies, warning signs, and any other additional requirements listed.

Self-audit checklists received by enforcement officers were viewed by the auditors. Although enforcement officers stated that they reviewed the information provided in the self-audit checklist, there was no documented verification of the information provided from the operator. This does not meet the Instrument of Delegation requirements that all permissions be audited. The standard operating procedure *VTA Audit Procedure* specifies that the completed checklist should be assessed for compliance against the permission conditions.

An “Aerial 1080 consultation survey form” also forms part of the enforcement officers’ audit of aerial 1080 operations. Enforcement officers forward this form to a selection of persons identified in the communications plan to verify the level of consultation and satisfaction. Enforcement officers stated that they try to contact people but have difficulties during working hours, so they mail or email a survey form, which is usually added to their audit report. Samples of these completed forms were reviewed and there were few complaints about the level of consultation undertaken by the operators. This survey is considered by the auditors to be good practice.

Incidents and complaints

When complaints or incidents associated with VTAs are received, the duty officer records information in the database. An enforcement officer assesses the matter and completes a risk assessment to determine public health risks and identify any actions required. Any incident needing formal investigation is referred to the Ministry of Health, otherwise enforcement officers check the site as necessary where the incident has occurred and provide recommendations to the operators or persons responsible.

Consistent with the EPA’s records, enforcement officers confirmed that no VTA incidents from MidCentral Public Health has occurred during the audited period.

Evidence of incidents (prior to the audit period) was filed in both the on-site computer system and were seen to have been received in the EPA database. The auditors viewed and discussed incidents. The complaints/incidents were considered by the auditors to be well documented and resolved such as the incident with Pindone pellets in Woodville Ferry Reserve where enforcement officers contacted the operator, visited the site and made recommendations where appropriate to reduce public health risk.

Any complaints against a permission application is addressed formally by the MidCentral Public Health’s medical officer of health. This ensures the appropriate level of oversight is provided.

Where enforcement action is required, the enforcement officers follow the Ministry of Health’s enforcement policy, and the regulatory section of the Manual which includes an enforcement framework. Enforcement officers inform their manager to prior using warranted powers. The Ministry of Health may hire an independent investigator to investigate a complaint/incident if required.

Signage

Obs 7: No inclusion or monitoring of permission conditions related to signage due to a lack of clarity around who is responsible for signage.

In June 2018, enforcement officers received an instruction from the Ministry of Health. This instruction included an updated table of the “Application of Model Permit Condition for VTAs and other Hazardous Substances”, which shows the MPCs for substances that require an s95A permission. The table states that the MPCs associated with signage are “not required, covered by the Health and Safety at Work (HS) Regs 2017) (reg 13.19 signage requirements for VTAs)”⁴⁹. Following this instruction, enforcement officers no longer include these conditions in permissions. Enforcement officers were instructed that because warning signage is set as a control⁵⁰ it does not need to be included as a condition in the permission.

MidCentral Public Health enforcement officers no longer monitor signage as there are no conditions in the permissions they issue that impose this requirement. Enforcement officers used to monitor signage and still consider signage as their best tool for informing the public of the risks arising from VTA operations being undertaken.

Enforcement officers were informed by the Ministry of Health that they could only request a preview of the information board, not the signage map which shows where signage will be erected for the operation. Currently, enforcement officers informally advise the applicants about signage. However, enforcement officers’ understanding is that they cannot enforce signage as it is no longer included as a permission condition.

Enforcement officers provided a recommendation for the Manawatu Gorge permission holder⁵¹ about the adequacy of entrance signage for access points but did not include signage conditions in the permission.

Enforcement officers also raised that signs may be difficult for tourists with limited English to understand and that inclusion of photographs of baits would be beneficial.

The auditors consider the instruction from the Ministry of Health to be prescriptive and that it does not take into account the power under s95A of the Act⁵². The auditors were also concerned that no monitoring of signage took place in the MidCentral Public Health regulated areas due to the exclusion of signage conditions from the permissions.

Opportunities for improvement

Opp 1: Information to justify the decision making for permission could not be easily located

Information associated with granting a permission was not always located in one file. MidCentral Public Health files documents either via a hard copy file or electronically scanned file into the on-site computer system. Additional information required to support permissions was recorded in the enforcement officers’

⁴⁹ Application of Model Permit Condition for VTAs and other Hazardous Substances, MPC 3, 19, 20 and 21.

⁵⁰ Health and Safety at Work (Hazardous Substances) Regulations 2017, clause 13.19.

⁵¹ Permission 18/478/BIM/PNPH

⁵² enforcement officer is able to add, delete or otherwise vary a condition on a permission if they deem it necessary to protect public health

notebooks. For example, conversations held between the medical officer of health and the enforcement officer, meetings with the Department of Conservation about the Te Apiti Manawatu Gorge Biodiversity permission⁵³ and changes in the conditions were recorded. These notes, however, were not consolidated with other application documents.

Any information associated with granting a permission should be easily located; this includes any file notes, emails, meeting notes and telephone calls to clarify information.

Opp 2: Permission conditions need to be specific and clear to the permission holder

Permission conditions were observed to be customised for certain model permit conditions to, for example:

- provide enforcement officers with the media schedule, copies of published notices and the specific media sources that notices were to be published
- advise the relevant councils of the operation
- provide enforcement officers with a copy of the DGPS download (flight line map) as soon as possible after the VTA is applied and log reports outlining the amount of VTA applied, supervising operators, names of pilots and any incidents.

While this is viewed as good practice, permission conditions should however be specific and not include conditions irrelevant to a particular permission. One permission⁵⁴ included *condition 9 – public notification* but stated in brackets “not required for this permission”. This creates confusion for the permission holder as to whether the condition needs to be complied with.

Opp 3: MidCentral Public Health wished to clarify the level of audit required by the Instrument of Delegation

The MidCentral Public Health standard operating procedure *VTA Audit Procedure* states that all aerial VTA operations must be audited by an enforcement officer, using a combination of field and desktop auditing techniques. All ground-based VTA permissions will include a self-audit with the submitted checklist assessed for compliance against the permission conditions by the enforcement officer.

The standard operating procedure ranks types of operations according to risk and includes the percentage of those operations that should be audited. The standard operating procedure specifies that 100 percent of aerial operations (high risk) are field and desktop audited, 20 percent of operations, ground-based (medium risk) are field and/or desktop audited and 10 percent of ground-based operations with limited public access (low risk) are desktop audited.

Enforcement officers are not currently following the criteria used to determine the “level of audit activity” required by their standard operating procedure *VTA Audit Procedure*⁵⁵ as they do not have sufficient resources. Permissions are issued for long-term ground operations on private land within the MidCentral

⁵³ Permission 18/478/BIM/PNPH

⁵⁴ Permission 18/455/BIM/PNPH

⁵⁵ Level of audit activity, clause 3.2 *VTA Audit Procedure*, p 6.

Public Health area but the enforcement officers consider these operations to be low risk and do not consider the requirement for auditing necessary.

The Instrument of Delegation requires all permissions to be audited. The MidCentral Public Health enforcement officers also issue a large number of permissions and find it resource intensive to audit all permissions. They always audit aerial 1080 permissions and any ground-based operations that are controversial.

The auditors agree that auditing all permissions is resource intensive. This feedback should be taken into account when the delegation is next reviewed.

Opp 4: There are limited internal safeguards in place to ensure that enforcement officers act within their delegated authority

MidCentral Public Health does not have a formal internal review process for issuing permissions. This has been discussed in the public health unit, but there are limited resources to implement such a process. For this reason, enforcement officers only peer review aerial 1080 and significant ground operations.

Peer reviews include the review of the application and whether the proposed conditions manage the risks. Peer reviews for aerial 1080 operations are completed by another enforcement officer and the medical officer of health. The permission⁵⁶ observed by the auditors complied with the peer review section of the MidCentral Public Health standard operating procedure *VTA Application for Permission Procedure*. Any applications that are assessed by non-enforcement officers are reviewed and signed by an enforcement officer, and applications that cross geographical boundaries involve two enforcement officers from the respective public health unit.

MidCentral Public Health could consider a simple internal audit process, for example, selecting permissions and conducting an annual review to determine if those permissions were issued correctly.

Opp 5: Application forms are designed for aerial 1080 applications and are not fit for purpose for ground-based operations

The enforcement officers stated that the VTA application forms approved by the EPA are designed to target aerial 1080 operations. The application forms are long and require applicants to provide information that is not relevant to ground-based only operations.

The Ministry of Health and the EPA should consider if there should be a separate form for ground-based only operations to reduce the administrative burden on operators and the enforcement officers reviewing these applications. Senior enforcement officers should be consulted if any changes to the forms are being considered so they can provide feedback in line with their operational needs.

Opp 6: The HSNO Act warrants do not include the power to issue compliance orders

The enforcement officers' warrants do not include the power under s104 of the HSNO Act to allow the holder to issue a compliance order. This appears to be consistent with the Manual which states that "the HSNO Act warrant does not currently empower enforcement officers to issue compliance orders, or give other functions or powers. If officers need to use these powers they should contact the Ministry of Health URGENTLY to discuss the matter".

⁵⁶ Permission 18/478/BIM/PNPH

This is an area where the Ministry of Health should consider including s104 power to enable enforcement officers to exercise their duties under s12 of the HSNO Act. Alternatively, the Ministry of Health should consider how a system for undertaking enforcement action would prevail when the power to issue a compliance order is not included in enforcement officers' HSNO Act warrants.

Documents sighted

- 1 MidCentral Public Health Activities And Intentions Report 2018
- 2 MidCentral Public Health Evidence of appointment
- 3 MidCentral Public Health HSNO Act training certificates
- 4 MidCentral Public Health VTA standard operating procedures: *VTA Application for Permission Procedure* and *VTA Audit Procedure*
- 5 Audit reports for permissions 15/305/BIM/PNPH, 17/02/MMT/WGPH, 18/02/MMT/WGPH
- 6 1080 Aerial Consultation Survey Forms

Northern Horowhenua DOC Reserves

- 7 18/455/BIM/PNPH Application
- 8 Associated emails with Northern Horowhenua DOC Reserves
- 9 19/7/BIM/PNPH permission
- 10 18/455/BIM/PNPH permission

Oraua

- 11 18/458/ACW/PNPH application
- 12 18/458/ACW/PNPH VTA/Pesticide Application Checklist
- 13 18/458/ACW/PNPH permission

Te Apiti Manawatu Gorge Biodiversity Project

- 14 18/478/BIM/PNPH Application
- 15 18/478/BIM/PNPH Risk Assessment
- 16 18/478/BIM/PNPH permission
- 17 18/479/BIM/PNPH (north) permission
- 18 18/490/BIM/PNPH (south) permission
- 19 Emails associated with Te Apiti Manawatu Gorge Biodiversity Project

Glossary of abbreviations

Communications Guideline	Communications Guideline for Aerial 1080 Operations(2009)
DGPS	Differential Global Positioning System
DHB	District Health Board
Enforcement officer	Health protection officer or medical officer of health appointed by the Ministry of Health under the Hazardous Substances and New Organisms Act 1996
EPA	Environmental Protection Authority
HSNO Act	Hazardous Substances and New Organisms Act 1996
MPC	Model Permit Conditions in the Ministry of Health. 2013. Issuing Permissions for the Use of Vertebrate Toxic Agents (VTAs) Guidelines for Public Health Units, March 2013g
The Guidelines	Ministry of Health. 2013. Issuing Permissions for the Use of Vertebrate Toxic Agents (VTAs) Guidelines for Public Health Units, March 2013
The Manual	Environmental Health Protection Manual [version 12]
MidCentral Public Health	MidCentral District Health Board Public Health Service, Te Pae Hauora o Ruahine, o Tararua Hauora mō te Iwi
VTA	Vertebrate toxic agents as specified in schedule 1 of the Instrument of Delegation issued by the EPA on 23 March 2016 (Instrument of Delegation)