

Vertebrate Toxic Agent Permissions Audit Report

Toi Te Ora Public Health

JUNE 2020



Environmental
Protection Authority
Te Mana Rauhi Taiao

New Zealand Government

The audit was conducted on 19 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 have been appointed as enforcement officers under the HSNO Act.¹ Medical officers of health and health protection officers are employed in public health units in district health boards (DHBs)².

On 19 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 within Toi Te Ora Public Health.

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

The audit identified one non-conformity with the exercise of the Instrument of Delegation. This is related to the requirement to audit all permissions. Although Toi Te Ora Public Health sends and receives self-audit checklists from permission holders, they do not verify all the checklists. This does not meet the requirement of auditing all permissions.

The auditors found there were good practices implemented by Toi Te Ora Public Health related to peer review and the templating of varied conditions. However, improvements are required to ensure that the system for granting the permissions continues to be robust. These include the following:

- reviewing standard operating procedures and ensuring that they reflect the various key documents that guide the granting of VTA permissions
- adding the reasons for the exclusion of conditions which are relevant to specific VTA operations
- including permission conditions relating to signage where required, monitoring and enforcing this.

Finally, the EPA expects Toi Te Ora Public Health to take actions to comply with the Instrument of Delegation and the various other key documents that support the VTA permission process. The EPA will work with Toi Te Ora Public Health to agree on an action plan that the public health unit must implement to address the findings of the report.

¹ See Instrument of Delegation.

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

Key findings

Table 1 summarises the non-conformity identified during the audit and the outcome the EPA expects the public health unit to achieve to be compliant with the key documents that support granting 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 includes opportunities for improvement.

Non-conformity

Table 1

Number	Brief description	Requirement
Monitoring and audit of permissions and permission processes		
NC 1	Self-audit checklists that form the enforcement officer's desktop audit were not always verified by the enforcement officers.	Enforcement officers will audit each permission.

Observations

Table 2

Number	Description	To be addressed by
Amendments to key documents		
Obs 1	Toi Te Ora Public Health standard operating procedures for VTAs were due to be reviewed in October 2018 but this was not completed at the time of the audit.	Toi Te Ora Public Health
Officer training and warranting		
Obs 2	Information provided to the Ministry of Health to verify ongoing competency for HSNO Act enforcement officers is not updated.	Toi Te Ora Public Health
Obs 3	Enforcement officers' warrants ³ refer to powers of entry under s103 HSNO Act. The correct reference is to s103A HSNO Act.	Ministry of Health
Policies and procedures		

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

Obs 4	Toi Te Ora Public Health processes for issuing VTA permissions were not always followed by the enforcement officers.	Toi Te Ora Public Health
Obs 5	The standard operating procedure <i>Issuing VTA Health Permission</i> is not aligned with the Instrument of Delegation.	Toi Te Ora Public Health
Document control		
Obs 6	Reissued permission does not refer to the previous permission it replaced.	Toi Te Ora Public Health
Risk assessment		
Obs 7	Risk assessments did not include the reasons for the exclusion of conditions which are listed in the Guidelines –Table 1: Applicable conditions by application method.	Toi Te Ora Public Health
Obs 8	Insufficient documentation existed to justify assessment of aerial 1080 applications in accordance with <i>Communications Guideline for Aerial 1080 Operations, (2009⁴)</i> .	Toi Te Ora Public Health
Signage		
Obs 9	No inclusion or monitoring of permission conditions related to signage due to a lack of clarity around who is responsible for signage.	Ministry of Health

Opportunities for improvement

Table 3

Number	Description	To be addressed by
Opp 1	Reasons why a VTA permission is not required should be made clear to the inquirer.	Toi Te Ora Public Health
Opp 2	Toi Te Ora Public Health wished to clarify the level of audit required by the Instrument of Delegation.	EPA
Opp 3	The HSNO Act warrants do not include the power to issue compliance orders.	Ministry of Health

⁴ <https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/Guidance/4569c19e32/1080-Communications-Guidelines.pdf>

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 substances which are classed as VTAs.

In certain cases, the EPA has also imposed additional controls with respect to VTAs⁵, 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”⁶.

Co-operation 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 (the Operational Agreement). Under the Operational Agreement, for instance:

- 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 Act⁷
- Enforcement officers are required to give full consideration to the *Communications Guideline* prior to granting permissions for the aerial use of 1080⁸.

Public health units, found within DHBs, implement the policy and statutory responsibilities of the Ministry of Health at a local level under the HSNO Act⁹. The Ministry of Health’s Environmental Health Protection Manual (The Manual) provides guidance on granting VTA permissions and training required for enforcement officers.

⁵ Under s77A of the HSNO Act.

⁶ See Instrument of Delegation.

⁷ Paragraphs 3.6 and 4.2.1 of the Operational Agreement.

⁸ Paragraph 4.2.6 of the Operational Agreement.

⁹ Introduction, The Manual, p 8.

Rationale for 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 permissions, granted by the enforcement officers employed by Toi Te Ora Public Health, for compliance with the requirements of s95A of the HSNO Act¹⁰
- appraising conditions imposed on permissions, amendments to Model Permit Conditions (MPCs) 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 implementation of key documents in the granting of VTA permissions
- identifying any opportunities for the public health unit, the Ministry of Health and EPA to improve the process for granting VTA permissions.

Date of audit

This audit was conducted on 19 June 2019. Findings were discussed with Toi Te Ora Public Health at the end of the audit.

Follow-up from the audit

Toi Te Ora 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 finalised report. This report documents the findings of the audit, classifying issues as non-conformities, observations and opportunities for improvement.

This audit report will be provided to Toi Te Ora Public Health and the Ministry of Health.

Enforcement officers at Toi Te Ora Public Health must provide the EPA with a proposed action plan within 15 working days from the issue of the report that addresses the non-conformities and observations raised in the report. 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

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

required improvements to ensure that the Toi Te Ora 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 Toi Te Ora Public Health's control. They will be discussed and actioned by the Ministry of Health (Obs 3, 9 and Opp 3) and the EPA (Opp 2).

Basic audit data

Audit date	19 June 2019
Audit period	26 October 2017 - 12 June 2019
Permissions audited by EPA	3
Applications made to Toi Te Ora Public Health*	28
Permissions granted *	15
Permissions declined*	0
Permissions revoked*	10
Permissions withdrawn*	12
Permissions audited by enforcement officers*	10
Desktop audit*	10
Field audit*	2

* Self-reported data from Toi Te Ora Public Health

Permissions sampled

Three 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	17-033-CEN-ROTPH	Exotic Forests Under the Management of PF Olsen Ltd and Timberlands Ltd (Exotic Forests)	26 October 2017
2	18-013-CEN-ROTPH	Whakatane Reserves Rat and Possum Control (Whakatane Reserves)	4 September 2018
3	19-002-CEN-ROTPH	Kaingaroa Forest	17 April 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
Standard Operating Procedure for Issuing VTA Health Permission	Toi Te Ora Public Health	October 2017
Standard Operating Procedure for Auditing Health Permission Conditions	Toi Te Ora Public Health	October 2017

* The Environmental Risk Management Authority (ERMA), EPA's predecessor

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

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

- the applications are lodged with the local public health unit, with one application being lodged for each permission sought¹²
- all conversations and requests for further information with the applicant is documented¹³
- the application is assessed by an health protection officer who prepares a risk assessment¹⁴ determining conditions required and the reasons for the proposed conditions¹⁵
- the permission is peer reviewed by another HSNO officer and the applicant¹⁶
- the final permission is signed off by the HSNO Officer¹⁷
- the permission is granted on 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 with permission conditions are to be investigated by enforcement officers and enforcement action taken, if necessary²³.

Access to key documents

The key documents referred to above, except for the Operational Agreement between the Ministry of Health and the EPA, were able to be accessed by the auditors during the audit.

Toi Te Ora 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 are able to access the Toi Te Ora Public Health standard operating procedures *Issuing VTA Health Permission* and *Auditing Health Permission Conditions* in their on-site computer system and were aware of them.

¹² Section 95A HSNO Act and the Guidelines

¹³ *Issuing VTA Health Permission*, p 2, para 2.

¹⁴ Clause 4 of the Instrument of Delegation. Para 2 *Issuing VTA Health Permission*, p 2.

¹⁵ Clause 4(b) of the Instrument of Delegation. Para 2, *Issuing VTA Health Permission*, p2.

¹⁶ Point 4, Responsibilities, *Issuing VTA Health Permission*, p 1.

¹⁷ Instrument of Delegation.

¹⁸ Section 95A(6) HSNO Act.

¹⁹ Point 5, Responsibilities, *Issuing VTA Health Permission*, p 1.

²⁰ Clause 7 of the Instrument of Delegation.

²¹ Clause 6 of the Instrument of Delegation.

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, *Issuing VTA Health Permissions*, p 2.

Amendments to key documents

Obs 1: Toi Te Ora Public Health standard operating procedures for VTAs were due to be reviewed in October 2018 but this was not completed at the time of the audit

Toi Te Ora Public Health has two standard operating procedures which guide their VTA permissions process. The standard operating procedures were due to be reviewed in October 2018. The Manager Health Protection advised they started the review process in October 2018 but have yet to finalise their standard operating procedures pending the EPA audit findings and discussion with other public health units. The current standard operating procedure: *Auditing Health Permission Conditions* includes a percentage of operations to be audited if they fit the high, medium and low risk criteria. Toi Te Ora Public Health wanted to confirm the frequency and proportion for auditing permissions before finalising the review of their standard operating procedures.

Additional information

The Ministry of Health provides updates or key messages to public health units through a newsletter circular available through the Ministry of Health's Emergency Management Information System. Any relevant changes are implemented in the standard operating procedures.

The auditors observed a good practice at Toi Te Ora Public Health where new information from the circular is discussed during the team meetings, added to meeting minutes and actions points are created to ensure that this information is addressed. The auditors found notes about the updated application form (June 2018), dates of hazardous substance training and VTA operation follow ups associated with responsible persons included in the meeting minutes.

Additional policy

Toi Te Ora Public Health also has a conflict of interest policy and register of conflicts for all areas of Health Protection work. Any conflicts of interest are declared on the "Interest Declaration Form" which is filed in individual personnel files.

Exercise of powers

The power to consider an application for, and grant permission to use, various VTAs in specific circumstances under s 95A of the HSNO Act has been delegated by the EPA to medical officer of health's and health protection officers appointed as enforcement officers under the HSNO Act.

The EPA database for VTA permissions were examined and all permissions granted by Toi Te Ora Public Health from 26 October 2017 to the date of this audit were granted by the enforcement officers. All sampled permissions were granted by the same enforcement officer. Warrants and training were sighted for the main enforcement officers who grant permissions at the audit.

The enforcement officers stated that it is highly unlikely that a non-warranted officer would assess an application, as six out of eight Statutory Officers are enforcement officers. All applications are entered into HealthScape and assigned to one of the two main enforcement officers who grant permissions. HealthScape is monitored by Toi Te Ora Public Health management, allowing managers to have oversight of the workload of the enforcement officers.

Officer training and warranting

Obs 2: Information provided to the Ministry of Health to verify ongoing competency for HSNO Act enforcement officers is not updated.

Hazardous substances training is required to be completed by each enforcement officer every three years to retain a HSNO Act warrant²⁴. If training is shown to be incomplete, the Ministry of Health considers revoking the warrant.

The manager of the public health unit is required to provide the Ministry of Health with an annual summary of training and qualifications for each enforcement officer to verify their competency²⁵. This includes current statutory appointments and completion dates for the Hazardous Substances Foundation and Refresher training courses.

The Ministry of Health reminds public health units of upcoming training and verifies if a person who has missed a training will continue to complete the training. People who do not complete training may have their warrants revoked by the Director-General of Health.

The auditors viewed the annual summary of training and qualifications (dated 31 July 2018) from Toi Te Ora Public Health to the Ministry of Health. The summary shows that two enforcement officers completed the HSNO Foundation course in 2014 but had not completed the Refresher course in 2017 when training was due.

Evidence of one of the enforcement officer's completion of the HSNO Refresher Course in 2017 was seen and therefore meets The Manual requirements to retain a HSNO warrant and continue to grant VTA permissions. The other enforcement officer, however, did not complete the training in 2017 and did not meet the criteria for the Appointment of Statutory Officers and could have his warrant revoked by the Ministry of Health. Further information was requested which confirmed that the Ministry of Health followed up on this issue and provided a one year extension on 26 October 2017 for this enforcement officer to repeat his training by 31 December 2018. Training did not occur by 31 December 2018 and therefore Toi Te Ora Public Health confirmed that this enforcement officer has had his warrant revoked. The EPA database of VTA permissions shows this enforcement officer has not granted any VTA permissions since 2012.

The Ministry of Health reviews any inconsistencies from the annual summary to verify ongoing competency. However, Toi Te Ora Public Health should be providing up to date information from their spreadsheet of enforcement officers completed training in the 2018 annual summary provided to the Ministry of Health.

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

Toi Te Ora Public Health stores copies of HSNO warrants in individual personnel files and in the public health unit system. These were easily accessible during the audit.

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.

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 good practice at Toi Te Ora Public Health where enforcement officers were seen to be documenting and following their peer review process in the standard operating procedure *Issuing VTA Health Permission*. The peer review process is completed on the “VTA Permission Check Form”. The peer reviewer reviews the application, risk assessment and the permission condition. Any feedback from the peer reviewer is documented and considered by the enforcement officer granting the permission. Evidence of peer reviews were seen to be saved in HealthScape for all sampled permissions. The peer review process also includes sending a PDF version of the draft conditions to the applicant to ensure that they understand all conditions. This enables any objections to the draft conditions to be discussed prior to the granting of the permission. This is considered to be good practice to ensure the applicant understands the conditions by reviewing permission conditions with them.

Obs 4: Toi Te Ora Public Health processes for issuing VTA permissions were not always followed by enforcement officers.

The auditors identified inconsistencies in following procedures outlined in the Toi Te Ora Public Health standard operating procedure *Issuing VTA Health Permission*. These are listed below:

- The standard operating procedure requires the enforcement officer to send the final PDF permission (with signed operational maps and each permission page initialled) to the operator, EPA and HealthScape²⁶. None of the sampled permissions showed pages initialled by the granting enforcement officer.
- All permissions were provided to the EPA within 20 working days as required by the Instrument of Delegation, however, the standard operating procedure requires a copy of the final permission to be sent to the EPA within three working days. The Whakatane Reserves permission²⁷ was granted on 4 September 2018 but the EPA received the permission on 11 September 2018. This is not within three working days as required by the standard operating procedure²⁸.

Although implementing a standard operating procedure is not a requirement under the Instrument of Delegation, the standard operating procedures support and simplify the process of issuing VTA permissions for day to day reference. It is recommended that the standard operating procedure is followed by the enforcement officers who are issuing VTA permissions.

²⁶ Point 5, Responsibilities, *Issuing VTA Health Permission*, p 1

²⁷ Permission 18-013-CEN-ROTPH

²⁸ Issuing VTA Permissions, *Issuing VTA Health Permission*, p 2.

Obs 5: The standard operating procedure *Issuing VTA Health Permission* is not aligned with the Instrument of Delegation.

The auditors identified discrepancies between the standard operating procedure documents and the Instrument of Delegation. These issues are listed below:

- The flow chart titled “Issuing permissions for the use of Vertebrate Toxic Agents (VTAs)” did not include the need to notify the EPA when a permission is revoked. It is a requirement in the Instrument of Delegation to provide the EPA with a copy of the revocation within 20 working days of the date of issue.
- The standard operating procedure also states that a copy of the final permission must be sent to the EPA within three working days. The Instrument of Delegation clause 7 states that the permission must be provided to the EPA within 20 working days of the date of issue. This is a discrepancy between the Instrument of Delegation and the standard operating procedure.

It is recommended that any standard operating procedures implemented by Toi Te Ora Public Health are consistent with the key documents that support the granting of VTA permissions so that the process is clear to the enforcement officers who are using the standard operating procedures.

Document control

Obs 6: Reissued permission does not refer to the permission it had replaced.

The application and permission forms are approved by the EPA. Appendix 4 of the Guidelines (Permission, amendment and revocation forms for use of VTAs) requires a reissued permission to have the following sentence added: “this permission replaces the permission issued on, application identification code of replaced permission”. The permission for Exotic Forests²⁹ was revoked due to an increase in operational area. The replacement permission for Exotic Forests³⁰ did not include the above sentence from the Guidelines. Adding this sentence to the reissued permission ensures the permission process is clear and traceable.

Risk assessment

Obs 7: Risk assessments did not include the reasons for the exclusion of conditions which are listed in the Guidelines Table 1: Applicable conditions by application method.

A risk assessment is used to assess VTA applications. The risk assessments for each sampled permission includes the checklist for assessing VTA applications and the “Setting of Permit Conditions” document that lists the selected Model Permit Conditions (MPCs) (conditions developed by the Ministry of Health and included in the Guidelines), any variation to MPCs and rationale for the inclusion of the condition. The “Setting of Permit Conditions” document includes a column titled “Rationale for inclusion/exclusion of condition” however, when MPCs are excluded, a reason for this exclusion is not recorded.

²⁹ Permission 17-029-CEN-ROTPH

³⁰ Permission 17-033-CEN-ROTPH

The Instrument of Delegation requires that a record must be maintained of the risk assessment that details the reasons for setting, amending or modifying any condition(s) included in the permission. For the sampled permissions, the risk assessment had identified the applicable MPCs for each application and the reason for selecting the MPCs³¹. This is in compliance with the delegation.

Table 1: “Applicable conditions by application method” of the Guidelines sets out the MPCs that apply to each kind of VTA and application type. The sampled permissions were seen to have excluded many MPCs which are listed in the table for the application of the substance (e.g. aerial 1080 and potassium cyanide), without justification of the exclusion.

The risk assessment for the aerial Kaingaroa Forest permission³² did not include the rationale why certain MPCs that apply to aerial 1080 operations were excluded. For example: conditions relevant to the exclusion from public areas, exclusion from walking and vehicle tracks, exclusion from schools and early childhood centres, aerial exclusions, aerial applications to tracks and first clearances, second clearances and GPS track logs, were not included in the permission.

The enforcement officers explained the exclusion of these conditions. The reasons included that the operations were conducted on private land where there is no public access unless permitted by the land owner. However, these reasons were not mentioned in the “Setting of Permit Conditions” document for that permission. The permission included water supply conditions to mitigate Iwi concerns over contamination of water supplies, despite there being no domestic water supplies in the operational area. Enforcement officers often make decisions to include MPC relating to water to ease public concern.

Justification around the exclusion 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.

Records of amendments, any clarifications and any follow up information missing from applications were seen to be documented. Email correspondence including further information requested by the enforcement officer for a specific application was seen to justify decision-making. For example, the application for the Whakatane Reserves permission³³ did not include the VTA name and required an update on page 4 of the application to include the hazardous substance. The enforcement officer requested an update on 3 September 2018 to correct the form and a response was received on 3 September 2018 from the applicant. This was recorded in the permission folder in their on-site computer system.

Obs 8: Insufficient documentation existed to justify assessment of aerial 1080 applications in accordance with *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* (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.

³¹ Clause 4(b) of the Instrument of Delegation.

³² Permission 19-002-CEN-ROTPH

³³ Permission 18-013-CEN-ROTPH

It was observed that for aerial 1080 applications, the VTA application checklist requires enforcement officers to record their assessment of the adequacy of public information and consultation campaign against the Communications Guideline through a tick box system. The enforcement officers would have no opportunity to include their reasoning using the checklist in its current form.

If enforcement officers receive a complaint regarding consultation, they follow up with operators to check if the person complaining should have been engaged in the consultation process. Enforcement officers also check that Iwi are consulted. Enforcement officers stated that the Ministry of Health advised that public health units need to check only consultation relevant to public health risks rather than the whole communication plan.

It is recommended that enforcement officers document the reasons why they consider that the applicant's communication plan meets the Communications Guideline, for example by assessing whether the applicant consulted the appropriate members of the community and has done so in a manner/at a level that meets the Communications Guideline. This recommendation aims to ensure that there is a record of the reasons for this assessment, increasing the public's confidence that the matter was thoroughly considered as well as the transparency of the decision-making process.

Permission conditions

The Instrument of Delegation allows the enforcement officer to add, delete or vary a condition on a permission. Toi Te Ora Public Health enforcement officers routinely deviate from the MPCs in the Guidelines, by amending them to be more specific. Enforcement officers customise the condition for notification, particularly for 1080 aerial operations, to "the applicant shall advise (the enforcement officer who granted the application) of Toi Te Ora Public Health of the proposed aerial treatment date, and the pre (non-toxic) feed treatment dates, at least 24 hours prior to commencing application". These notification conditions are customised due to issues identified in the past with aerial operations. By varying the notification condition the enforcement officer responsible for granting the permission receives the notification directly and is able to provide accurate advice to the public during the pre-feed application stage and the toxic application stage.

Another variation seen in permission conditions was the notification conditions for landowners, schools, health services and the public. The variation seen requires the applicant to notify the various parties and to provide Toi Te Ora Public Health a copy of the database of notified landowners and the date of notification to Toi Te Ora Public Health within two weeks. This allows enforcement officers to check for compliance with their permission conditions.

The auditors observed the good practice of including in the document "Setting of Permit Conditions" the variation to MPCs and the rationale for the change in the conditions. This document is used via the standard operating procedure *Issuing VTA Health Permission* to provide consistency across varied permission conditions.

Monitoring and audit of permissions and permission processes

The Instrument of Delegation³⁴ requires an enforcement officer to audit each permission and document the decision to undertake a field or desktop audit. Of the sampled permissions, evidence of two field audits and two desktop audits were seen to be conducted for the three permissions³⁵.

Enforcement officers stated that they conduct field audits for all aerial 1080 operations. The audit reports include the following rationale for choosing a type of audit:

“Toi Te Ora – Public Health Service requirement that all aerial 1080 operations are field audited”.

The permissions for aerial 1080 operations include additional conditions that require the applicant to provide the enforcement officer granting the permission with the log report and Differential Global Positioning Systems (DGPS) Flight line map for audit purposes. This forms the desktop audit for aerial 1080 operations.

For the two aerial 1080 permissions³⁶, the auditors saw evidence of:

- field audit
- the DGPS Flight line map
- notification email
- log report.

The enforcement officer advised that a field audit was conducted of the Exotic forest permission³⁷ but they did not produce an audit report.

The audit report form for the Kaingaroa permission³⁸ included verification of consultation/notification from the application. This was completed via desktop audit review. The log report and DGPS Flight Line Map were reviewed. The audit summary concluded that the overall findings were satisfactory and an audit outcome letter was sent to the permission holder.

NC 1: Self-audit checklists that form the enforcement officer’s desktop audit were not always verified by the enforcement officers.

Enforcement officers include an additional permission condition titled “Self-audit for ground-based VTA application” for desktop audit purposes of ground operations. The condition states “the ground-based VTA operation self-audit checklist enclosed must be completed by the operator and forwarded to the enforcement officer or Toi Te Ora Public Health Service within two weeks of the completion of the operation”. This self-audit checklist includes self- checking for notifications, excluded areas, domestic drinking water supplies, public drinking water supplies, warning signs, and additional requirements.

³⁴ Clause 6 of the Instrument of Delegation

³⁵ Permission 17-033-CEN-ROTPH, permission 18-013-CEN-ROTPH and permission 19-002-CEN-ROTPH

³⁶ Permission 17-033-CEN-ROTPH and permission 19-002-CEN-ROTPH

³⁷ Permission 17-033-CEN-ROTPH

³⁸ Permission 19-002-CEN-ROTPH

The auditors viewed the completed self-audit checklist for the Whakatane Reserves permission³⁹. However, there was no verification of the information provided from the operator and therefore it does not meet the Instrument of Delegation requirement that all permissions will be audited. Enforcement officers confirmed that all permissions are “audited”, either via field/desktop audit (aerial 1080) or via self-audit, but verification of compliance as reported in the self-audit checklist is not always completed. The standard operating procedure *Auditing Health Permission Conditions* specifies that the completed checklist should be assessed for compliance against the permission conditions.

Incidents and complaints

When complaints or incidents associated with VTAs are received, the enforcement officers follow their flow chart “VTA Complaint Procedure” in the standard operating procedure *Issuing VTA Health Permissions* and discuss the incident/complaint with their medical officer of health to determine the suitable action. Enforcement officers may go out with the operator to check the site of the incident, or may ask for the operator’s report on remedial actions taken. If there are no risks to public health the incident will be referred to the relevant agency or the operator. Enforcement officers provide a completed incident report to the EPA, generally within 24 hours, depending on the outcome of the investigation.

There have been no reported incidents for the requested time period (26 October 2017 – the audit date) and EPA’s records also show no incidents from Toi Te Ora Public Health associated with VTAs for this period.

Evidence of incidents (prior to the audit period) were seen to be filed in their on-site computer system. The auditors viewed an incident report from an operator dated 23 September 2016 where flight lines showed the possibility that baits may have been applied outside the consented area. The report showed there were no baits outside the operational area. Toi Te Ora Public Health did not notify this incident to the EPA as there was no identified non-compliance.

If complaints are received from the public about a specific operation, the enforcement officers contact the operator and request a file note regarding the complaint. The operator usually provides the public with the contact details of Toi Te Ora Public Health staff. Any complaints received by Toi Te Ora Public Health are addressed formally via letter to the complainant. Evidence of this was seen in the “complaints and incident” folder in the on-site computer system and HealthScape, for example the response from an enforcement officer to the local paper regarding Turangi’s drinking water.

If enforcement action is required the enforcement officers follow the Ministry of Health’s enforcement policy and the enforcement framework in the regulatory section of The Manual. Toi Te Ora Public Health stated that no enforcement action has been taken by this public health unit to its knowledge.

Providing permissions to the EPA

The Instrument of Delegation⁴⁰ requires a copy of each permission issued, amended or revoked to be provided to the EPA no later than 20 working days after the date of issue.

³⁹ Permission 18-013-CEN-ROTPH

⁴⁰ Clause 7 of the Instrument of Delegation.

Enforcement officers either send a copy of the permission to the applicant and the EPA in the same email, or provides the permission to the EPA in a separate email. The sampled permissions were confirmed to be provided to the EPA within 20 working days of issue. Emails to the EPA were filed in HealthScape including the confirmation of receipt email from the EPA. This is compliant with the Instrument of Delegation.

Signage

Obs 9: 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 that included an updated table of the “Application of Model Permit Condition for VTAs and other Hazardous Substances”. This shows the MPCs for substances that require an s95A permission. The table states that the MPCs associated with signage is “not required, covered by the Health and Safety at Work (HS) Regs 2017 (rig 13.19 signage requirements for VTAs)”⁴¹. Following this instruction, enforcement officers no longer include these conditions in permissions, e.g. warning signage is set as a control⁴² so it should not be included as a condition in the permission.

Toi Te Ora Public Health enforcement officers no longer monitor signage following the instruction from the Ministry of Health. This is recorded on their “Setting of Permit Conditions” document for their risk assessments.

Toi Te Ora Public Health used to monitor signage and still consider signage as the last defence to protect public health. In the past signage was monitored by the enforcement officers driving around all publically accessible areas in relation to the operation. The enforcement officers photographed signage, checked the time and date stamp on the signage and the boundaries of the operation.

Enforcement officers previously advised where to place signs, how many and what to include on the signs. Currently Toi Te Ora Public Health staff informally advise applicants about signage, however, their understanding is that they cannot enforce signage as they no longer include these permission conditions.

Enforcement officers from Toi Te Ora Public Health have raised their concerns with the Ministry of Health and WorkSafe about the instruction to no longer include signage conditions in permissions and their inability to monitor and enforce signage. The enforcement officers are concerned that this may raise risks to public health as they are no longer monitoring signage, or its vandalism, which is widespread within their area.

Enforcement officers are also concerned about the lack of clarity as to which agency is responsible for monitoring signage, which may create a risk due to a lack of active monitoring. Their current process for signage is to refer any complaints about signage to the operator and WorkSafe.

The auditors consider the instruction by the Ministry of Health prescriptive, and does not take into account the power under s95A of the HSNO Act where an enforcement officer is able to add, delete or otherwise vary a condition on a permission they deem necessary to protect public health, including signage. The

⁴¹ Application of Model Permit Condition for VTAs and other Hazardous Substances, MPC 3, 19, 20 and 21.

⁴² Health and Safety at Work (Hazardous Substances) Regulations 2017, clause 13.19.

auditors were also concerned that no monitoring of signage took place in the Toi Te Ora Public Health regulated areas due to the exclusion of signage conditions in permissions.

Opportunities for improvement

Opp 1: Reasons why a VTA permission is not required should be made clear to the inquirer.

Enforcement officers recommend that any person(s) planning to conduct a VTA operation contact Toi Te Ora Public Health about any proposed VTA operations including those on private land. This enables the enforcement officers to assess and decide if a VTA permission is required. If enforcement officers assess the information and decide a permission is not required, then the “VTA not required template” letter is sent to the inquirer. The letter describes:

1. where the VTA will be applied
2. information about the operational area
3. any relevant information provided from the inquirer, and
4. when a permission from an enforcement officer is required.

The letter is a good example of risk communication for VTA users who do not require a VTA permission from Toi Te Ora Public Health. However it should provide an explanation or reasons why a VTA permission was not required in relation to the specific operation.

Opp 2: Toi Te Ora Public Health wished to clarify the level of audit required by the Instrument of Delegation.

The Toi Te Ora Public Health standard operating procedure *Auditing Health Permission Conditions* states that all aerial VTA operations must be audited by an enforcement officer, using a combination of field and desktop auditing techniques and all ground-based VTA permissions will include a self-audit checklist that should be assessed for compliance against the permission conditions.

The standard operating procedure ranks types of operations and includes the percentage of those operations that should be audited. The standard operating procedure specifies that 100% of aerial operations (high) are field and desktop audited, 20% of operations, ground-based (medium) are field and/or desktop audited and 10% of ground based operations (low) 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 *Auditing Health Permission Conditions*⁴³. Toi Te Ora Public Health is currently reviewing and discussing the “level of audit activity” section of their standard operating procedure as it does not align with the Instrument of Delegation⁴⁴. However, Toi Te Ora Public Health questioned the requirement of auditing all permissions. Toi Te Ora Public Health believes auditing should be risk- based and auditing 100% of permissions is not a risk-based system.

The auditors observed that auditing all permissions is resource intensive for the public health unit. The EPA has a role to review whether the Instrument of Delegation requirement is suitable and should consider this feedback.

⁴³ Level of audit activity, *Audit Health Permission Conditions* p3

⁴⁴ Clause 6, Instrument of Delegation.

Opp 3: 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 which gives enforcement officers the power to issue a compliance order. The Manual also 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".

This is an area where the Ministry of Health should consider including this directive 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 Toi Te Ora Public Health training records
- 2 Toi Te Ora Public Health enforcement officers vidence of appointment
- 3 Toi Te Ora Public Health VTA not required template letter
- 4 Toi Te Ora Public Health VTA Procedures: *Issuing VTA Health Permission and Auditing Health Permission Conditions*

Exotic Forests

- 5 Exotic Forests Application
- 6 Exotic Forests Risk Assessment
- 7 17-029-CEN-ROTPH Revocation Letter
- 8 17-033-CEN-ROTPH Permission

Whakatane Reserves Rat and Possum Control

- 9 Whakatane Reserves Application
- 10 Whakatane Reserves Risk Assessment
- 11 18-013-CEN-ROTPH Permission
- 12 Ground Operation Self-Audit Checklist

Kaingaroa Forest

- 13 Kaingaroa Forest Application
- 14 Kaingaroa Forest Risk Assessment
- 15 19-002-CEN-ROTPH Permission

Glossary/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
HealthScape	A database system recording and reporting on public health unit activities and group collaborations.
HSNO Act	Hazardous Substances and New Organisms Act 1996
MPCs	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 2013
Non-conformity	Issues that need immediate attention by the public health unit to address a non-compliance with the law, delegation or the Guidelines.
Observation	Refers to a possible future non-compliance or an area that requires attention to ensure compliance with standard operating procedures or the Manual.
Opportunity for improvement	Refers to areas for the public health unit to improve their processes or for the Ministry of Health or the EPA to consider and action.
The Guidelines	Ministry of Health. 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]
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)