

Vertebrate Toxic Agent Permissions Audit Report

Waikato District Health Board
Public Health Unit

JUNE 2020



Environmental
Protection Authority
Te Mana Rauhi Taiao

New Zealand Government

The audit was conducted on 12 June 2019. A sample of VTA 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 12 June 2019, the EPA audited the exercise of this delegation to medical officers of health and health protection officers appointed as enforcement officers, who are employed in the public health unit based within the Waikato District Health Board (Waikato DHB).

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

The audit identified non-conformities, among them system issues. The main areas of concern identified were:

- quality of information submitted in applications and risk assessments to grant a VTA permission
- management of the VTA permission system from the public health unit
- oversight issues to ensure the various key documents supporting the VTA permission process are followed
- insufficient support from Waikato DHB and the Ministry of Health to allow enforcement officers to exercise the Instrument of Delegation
- four permissions were not provided to the EPA within 20 working days.

In addition, another non-conformity identified includes the granting of 18 VTA permissions by an unwarranted health protection officer. The assessment of the applications for these permissions was completed by an experienced former enforcement officer. However, this is part of the overall findings that some elements of the enforcement officer's process for granting permissions do not comply with the key documents of the delegation.

The public health unit was directed to have only enforcement officers granting VTA permissions and to put measures in place to enable compliance with the granting of VTA permissions. Immediately following the audit, actions were taken by the public health unit to remediate the issue identified in relation to the 18

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>.

permissions granted. During this process, the EPA was provided with updates on the actions taken to remediate the 18 permissions.

The EPA expects the public health unit 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 the public health unit 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 outcome the EPA expects the public health unit to achieve to be compliant with the key documents that support 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 and requirements

Number	Brief description	Requirement
Exercise of Power		
NC 1	Non-enforcement officer sign off on VTA permissions	Only medical officers of health and health protection officers who have been appointed as enforcement officers under the Act must grant, vary or revoke a VTA permission.
Policies and procedures		
NC 2	Two permissions were granted without a corresponding application	A new application must be submitted for each permission granted.
NC 3	Naming convention for permissions not followed	The naming convention for the application identification code for VTAs must follow page 25 of the Guidelines.
Sufficient information for assessment of applications		
NC 4	Information available to support application decisions was incomplete and inconsistent	Every decision-maker under the HSNO Act needs to include reasons for granting an application to reach a decision.
Risk assessment		
NC 5	Risk assessments did not include reasons for the setting of conditions	Each risk assessment must detail the reasons for setting, amending or modifying conditions included in the permission.
Monitoring and audit of permissions and permission processes		
NC 6	Not all permissions were audited by enforcement officers and the rationale was not documented	Enforcement officers must audit each permission and record the rationale for deciding to undertake a field or desktop audit.
NC 7	An identified non-compliance with permission conditions was not investigated	Enforcement officers must monitor and audit operations for compliance with Permit Conditions and take appropriate actions where a non-compliance is identified.

Providing permissions to the EPA

NC 8	Four permissions were not provided to the EPA within 20 working days after the date of issue	A copy of each permission issued, amended or revoked must be provided to the EPA no later than 20 working days after the date of issue.
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Observations

Table 2

Number	Description	To be addressed by
Officer training and warranting		
Obs 1	Copies of enforcement officers' warrants ³ were not easily located or readily available.	Waikato DHB public health unit
Obs 2	Evidence of appointment lists enforcement officers' powers under s103 of the HSNO Act instead of s103A.	Ministry of Health
Policies and procedures		
Obs 3	Waikato DHB public health unit standard operating procedure processes for issuing VTA permissions were not always followed by the enforcement officers.	Waikato DHB public health unit
Obs 4	The standard operating procedure <i>Vertebrate Toxic Agent (VTA) Applications</i> is not aligned with the Instrument of Delegation.	Waikato DHB public health unit
Risk assessment		
Obs 5	Insufficient documentation existed to justify assessment of aerial 1080 applications in accordance with <i>Communications Guideline for Aerial 1080 Operations</i> (2009).	Waikato DHB public health unit
Incidents and complaints		
Obs 6	Locating incident reports within their on-site computer system was difficult.	Waikato DHB public health unit
Signage		
Obs 7	Lack of clarity relating to responsibilities for monitoring and enforcing signage.	Ministry of Health

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

Opportunities for improvement

Table 3

Number	Description	To be addressed by
Opp 1	The approach, extent of and type of audit required by enforcement officers for permissions granted, as required under the delegation, was unclear to the public health unit.	EPA
Opp 2	There are limited internal safeguards ensuring that enforcement officers are acting within their delegated authority.	Waikato DHB public health unit
Opp 3	The HSNO Act warrants do not include the power to issue compliance orders.	Ministry of Health

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 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.

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 Act⁶
- enforcement officers are required to give full consideration to the Communications Guideline for Aerial 1080 Operations prior to granting permissions for the aerial use of 1080.⁷

Public health units, within DHBs, implement the policy and statutory responsibilities of the Ministry of Health at a local level under the HSNO Act⁸. The public health unit Annual Plan is based on the Ministry’s environmental health exemplar which sets out performance expectations and measures including carrying out VTA permission activities in accordance with the Ministry’s Environmental Health Protection Manual

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 Paragraph 4.2.6 of the Operational Agreement.

⁸ Introduction, the Manual, p 8.

(the Manual). The Manual provides guidance on granting VTA permissions and training required for enforcement officers.

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, issued by the enforcement officers employed by the Waikato DHB, for compliance with the requirements of s95A of the HSNO Act⁹
- 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 12 June 2019. Findings were discussed with Waikato DHB public health unit.

Follow-up from the audit

Waikato DHB public health unit 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 and observations.

This audit report will be provided to the Waikato DHB public health unit and the Ministry.

Enforcement officers at Waikato DHB public health unit 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

⁹ This included compliance with the Instrument of Delegation, The Guidelines, Waikato DHB policies and procedures and The Manual.

expected to be implemented within the specified timeframes in the agreed action plan. The plan should include the required improvements to ensure that the Waikato DHB public health unit 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 Waikato DHB's control. They will be discussed and actioned by the Ministry of Health (Obs 2, Obs 7 and Opp 3) and the EPA (Opp 1).

Basic audit data

Audit date	12 June 2019
Audit period	16 Feb 2018 - 12 June 2019
Permissions audited by EPA	4
Applications made to Waikato DHB*	31
Permissions granted *	31
Permissions declined*	0
Permissions revoked*	0
Permissions withdrawn*	0
Permissions audited by enforcement officers*	1
<ul style="list-style-type: none"> Desktop audit* 	0
<ul style="list-style-type: none"> Field audit* 	1 – Field and desktop audit for the same VTA operation

* Self-reported data from the Waikato DHB public health unit

Permissions sampled

Four 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	Date granted
1	18-3483-CM-WAPH-M&M-Mt Pirongia West	19 February 2018
2	18-3499-CM-WAPH-EcoFx-Arohena S2 Aerial	8 November 2018
3	18-3513-CM-WAPH-EcoFx-Ngaroma Ground	5 December 2018
4	19-3515-CM-WAPH-EcoFx-Arohena S2 Aerial-Extension	12 February 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 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
Vertebrate Toxic Agent (VTA) Applications – Standard Operating Procedure (version 6)	Waikato DHB	1 July 2018
Vertebrate Toxic Agent (VTA) Audits – Standard Operating Procedure (version 3)	Waikato DHB	1 June 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 forms¹⁰
- the applications are lodged with the local public health unit, with one application being lodged for each permission sought¹¹;

¹⁰ Section 95A HSNO Act and clause 2 of the Instrument of Delegation.

¹¹ Section 95A HSNO Act and The Guidelines

- any missing or additional information is requested by the health protection officer who processes the application¹²
- the application is assessed by an health protection officer who prepares a risk assessment¹³ with recommendations and proposes conditions for the approved signatory¹⁴ including the reasons for the proposed conditions¹⁵
- the approved signatory, who is an enforcement officer under the HSNO Act¹⁶, considers the application and, if satisfied, grants the permission¹⁷
- 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 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 were able to be accessed by the auditors during the audit.

Waikato DHB 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 Waikato DHB standard operating procedures *Vertebrate Toxic Agent (VTA) Applications* and *Vertebrate Toxic Agent (VTA) Audits* via their intranet under the heading 'Public Health' and were aware of them.

¹² Action 3, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 4.

¹³ Clause 4 of the Instrument of Delegation. The "risk assessment" is alternatively referred to as a "report" in Action 4, clause 2.2 *Vertebrate Toxic Agents (VTA) Applications*.

¹⁴ Action 4, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 4.

¹⁵ Clause 4(b) of the Instrument of Delegation.

¹⁶ Instrument of Delegation.

¹⁷ Action 6, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 4.

¹⁸ Section 95A(6) HSNO Act.

¹⁹ Action 6, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 4.

²⁰ Clause 7 of the Instrument of Delegation.

²¹ Clause 6 of the Instrument of Delegation.

²² The Guidelines, p29-30; action 9, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 5; action 1, clause 2.2 *Vertebrate Toxic Agent (VTA) Audits*, p 3.

²³ enforcement officers' powers under a warrant (section 103A HSNO Act); clauses 3.5 and 4.2.7 of the Operational Agreement; the enforcement officer's 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 officers' obligations following an audit (action 10, clause 2.2, *Vertebrate Toxic Agent (VTA) Audits*, p 4).

Amendments to key documents

Enforcement officers advised that any issues with the standard operating procedures are usually raised with the Team Leader Health Protection and the medical officer of health. These standard operating procedures are reviewed every three years and approved by the medical officer of health. Any changes in the standard operating procedures are discussed at the unit's six-weekly meetings.

Additional information

The Ministry of Health provides updates or key messages to public health units through a newsletter "circular". This is sent to managers within the public health unit who then provide this information to enforcement officers. Any relevant changes are implemented in the standard operating procedures.

Additional policy

The public health unit also has a conflict of interest policy made available to staff via their intranet. Health protection officers (including enforcement officers) have a code of conduct which includes a conflict of interest document that each health protection officer signs annually as part of their performance review.

Exercise of powers

NC1: Permissions granted from 15 October 2018 to the date of the audit were not granted in accordance with the Instrument of Delegation

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 officers of health and health protection officers appointed as enforcement officers under the HSNO Act.

All VTA permissions granted between 15 October 2018 and the date of this audit, were granted by an unwarranted health protection officer.

The audit identified that:

- the applications had been assessed by an ex-warranted health protection officer, in accordance with the procedure from the Waikato DHB standard operating procedure *Vertebrate Toxic Agent (VTA) Applications*.²⁴ This enforcement officer had been an enforcement officer for some 10 years but was no longer an enforcement officer as, pending retirement, he had decided not to attend the Ministry of Health's mandatory training. This led to his warrant under the HSNO Act being revoked. Both the warrant and the revocation letter for this enforcement officer were sighted by the auditors;
- the health protection officer who granted the 18 permissions had not been appointed as an enforcement officer under the HSNO Act and did not hold a warrant. This was confirmed during the audit by the Ministry of Health.

²⁴ Action 4, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*, p 4.

This resulted in a total of 18 VTA permissions being issued during this period and signed by an unwarranted health protection officer who had not been appointed as an enforcement officer under the HSNO Act and, consequently, did not hold a warrant.

The public health unit was verbally directed to have only enforcement officers granting VTA permissions and to put measures in place to enable compliance with the granting of VTA permissions. Immediately following the audit, actions were taken by Waikato DHB public health unit to determine the extent of the issue and to remediate the issue identified in relation to the 18 permissions granted by a non – warranted health protection officer. During this process, the EPA was provided with updates on the actions taken to remediate the 18 permissions.

Officer training and warranting

Hazardous substances training is required to be completed by each enforcement officer every three years to retain a HSNO Act warrant²⁵. 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 competency.²⁶ This includes current statutory appointments and completion dates for the Hazardous Substances Foundation and Refresher training courses. The EPA does not receive copies of these annual summaries but is provided annually with the names of the enforcement officers for all public health units.

Obs 1: Copies of enforcement officers' warrants were not easily located or readily available

There are six warranted HSNO Act enforcement officers employed by Waikato DHB within this public health unit. Evidence of warranting and training was provided during the inspection for each of the six officers. This evidence was not easily located as it was not filed in the on-site computer system. For example, hard copies were stored with either the enforcement officer or the Team Leader Health Protection.

Obs 2: 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.

²⁵ Section 11.2.2, p 10 The Manual.

²⁶ Appendix 1: 2018-19 Hazardous Substance Action Plan, The Manual, Version 12, page 60.

Policies and procedures

NC 2: 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 permission is issued²⁷”.

The auditors found that:

- there was no application submitted for the Arohena Sector 2 Aerial Extension permission²⁸; and
- only an incomplete risk assessment relating to this permission above was located; and
- Arohena S2 Ground-Addition and Arohena S2 Aerial permissions²⁹ were issued under one application form.

NC 3: Granted permissions did not follow the naming convention required in The Guidelines which includes the initials of the person granting the permissions.

The Guidelines: *Chapter 4: Risk Management – Application identification code for VTAs* requires that the initials of the person granting the permission be included in the VTA application identification code.

For three of the permissions³⁰ audited, the naming included the initials of the officer who had, in effect, assessed the applications, but who did not grant these permissions as he was no longer an enforcement officer. The permissions had been granted by the unwarranted health protection officer whose initials were not included in the naming.³¹

Obs 3: Waikato DHB public health unit standard operating procedure processes for issuing VTA permissions were not always followed by the enforcement officers

The auditors identified inconsistencies in following some procedures outlined in the Waikato DHB standard operating procedure *Vertebrate Toxic Agent (VTA) Applications*. These are listed below:

- The standard operating procedure requires that two persons, the approved signatory and a health protection officer (who prepared a report with recommendations and proposed conditions), consider the application and sign off the report form³². All sampled permissions contained report forms (included in the risk assessment) that had not been signed by two different persons.

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

²⁸ Permission 19-3515-CM-WAPH-EcoFx-Arohena S2 Aerial – Extension

²⁹ Permission 18-3500-CM-WAPH-Ecofx-Arohena S2 Ground-Addition and permission 18-3499-CM-WAPH-EcoFx-Arohena S2 Aerial.

³⁰ ExoFx Ngaroma Ground, Arohena 2, Arohena 2 extension.

³¹ See discussion above at NC1.

³² Action 4, clause 2.2 *Vertebrate Toxic Agent (VTA) Applications*.

- One permission³³ was assessed and signed off by the same enforcement officer, without a second person undertaking a peer review.
- The enforcement officers use a different risk assessment template to Appendix 1 of the standard operating procedure which was provided to the public health unit from the Ministry, as the enforcement officers consider that the template does not cover all matters requiring examination.

Although implementing a standard operating procedure is not a requirement under the Instrument of Delegation, the standard operating procedure supports and simplifies the process of issuing VTA permissions for day to day reference. The standard operating procedure should be followed by the enforcement officers who are issuing VTA permissions.

Obs 4: The standard operating procedure *Vertebrate Toxic Agent (VTA) Applications* 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:

- Action 8 and the Escalation section of the standard operating procedure does 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 does not include the timeframe for sending the permissions to the EPA. 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.
- The auditors also noted a discrepancy between the Instrument of Delegation and the Ministry of Health contract that requires the issued permission to be sent to the EPA within three working days from the date of issue.

Standard operating procedures implemented by Waikato DHB need to be consistent with the key documents that support the granting of VTA permissions.

Sufficient information for assessment of applications

NC 4: Information available to support application decisions was incomplete and inconsistent

Under s95A (3) of the HSNO Act, in considering an application for a permission, the decision-maker must consider the adverse effects involved in the use or uses of the substance to which the application relates; and the conditions (if any) that should be imposed as part of the permission.

Every decision-maker under the HSNO Act needs to include reasons for granting an application. Without information to justify the reasons, the decision-maker cannot reach a decision.

An application defines what permission is sought.

- Amendments to an application change what permission is sought.

³³ Permission 18-3483-CM-WAPH-M&M-Mt Pirongia West

- If the application is incomplete, then the additional information requested should inform the decision made.

Without these records, the decision-maker might not be able to demonstrate why a permission was granted on the terms that it did or whether all the relevant information was considered. This could lead to a decision being invalid.

Enforcement officers store documentation relevant to applications and permissions in hard copy files for each individual application. However, there was insufficient documentation associated with the sampled permissions to verify decision-making. For example, the enforcement officers had not documented telephone conversations regarding the applications, there were no records of enforcement officers following up on incomplete applications or missing information with applicants, and not all relevant correspondence had been filed.

The audit found that, in relation to the sampled permissions, the enforcement officers did not keep complete records of amendments to applications; or clarifications sought by the enforcement officers from applicants.

It was also noted that applicants were not necessarily requested to provide information when their applications were incomplete.

The auditors found, for example, that:

- Arohena S2 Aerial permission³⁴ was proposed to be sub-contracted, and sub-contractors' contact details were missing from the application;
- Ngaroma Ground permission³⁵ was granted allowing hand broadcast (hand application) of 1080 where, based on the documents held on the file, hand broadcast had not been applied for. There was no supporting documentation on the file to justify this addition.
- Some of the applications requested a specific time period for an operation, but the permission was granted for a different time period without documenting the reasons for the change.

Risk assessment

NC 5: Risk assessments did not include the reasons for setting, amending or modifying conditions as required by the Instrument of Delegation

A risk assessment is used to assess VTA applications. The risk assessment includes the VTA application checklist, report and recommendations, and the conditions selected from Model Permit Conditions (MPCs) (conditions developed by the Ministry of Health and included in the Guidelines). A record is maintained of the risk assessment and kept with individual permission files.

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. However, it did not include the reasoning for selecting the MPCs³⁶.

³⁴ Permission 18-3499-CM-WAPH-EcoFx-Arohena S2 Aerial.

³⁵ Permission 18-3513-CM-WAPH-EcoFx-Ngaroma Ground.

³⁶ Clause 4(b) of the Instrument of Delegation.

Justification for decision-making was also not documented by the person completing the risk assessment.

Obs 5: 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* (Communications Guideline) prior to granting permissions for the aerial use of 1080.

The enforcement officers advised that, as a matter of practice, they assess applications for aerial 1080 against the Communications Guideline.

It was observed that, for aerial 1080 operations, the VTA application checklist required enforcement officers to record their assessment of notifications, communication with the community, consultation with Māori and affected parties only through a tick box system. The enforcement officers would have no opportunity to include their reasoning using the checklist in its current form.

It is recommended that enforcement officers document their assessment of the communications plans against the Communications Guideline. For example, the enforcement officers may verify if the applicant has consulted with the appropriate members of the community and that the consultation was done 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.

Monitoring and audit of permissions and permission processes

NC 6: Not all permissions were audited by enforcement officers and the rationale for deciding to undertake a field/desktop audit was not documented as required by the Instrument of Delegation

The Instrument of Delegation³⁷ requires an enforcement officer to audit each permission and to document the decision to undertake a field or desktop audit. Of the sampled permissions, the enforcement officers could not provide evidence that these permissions had been audited. The enforcement officers confirmed that not all granted permissions were audited (desktop or field audit).

Evidence was not provided to demonstrate that any desktop audits had been undertaken.

The auditors found that the only audits undertaken were field audits. A field audit is supported by a 'Vertebrate Toxic Agent Checklist Audit' and would include prompts to verify signage, track clearance, flight lines and the helicopter/fixed-wing aeroplane loading zone.

The enforcement officers advised the auditors that they would notify WorkSafe where matters of concern relating to their legislation were raised at field audits.

³⁷ Clause 6 of the Instrument of Delegation.

The audit found that the enforcement officers undertook field audits for aerial 1080 operations, but the rationale for undertaking a field audit in such circumstances was not always fully explained in the audit document as required by the Instrument of Delegation.

NC 7: An identified non-compliance with permission conditions was not followed up

Model Permit Condition 1 states that: the applicant shall advise the public health unit of the commencement of the application of the VTA, at least 12 hours before commencing application. The audit found that for the Mt Pirongia West permission, the notification email from the operator stated “just want to advise that we have started Mt Pirongia West Operation”. This statement was considered by the auditors to be a non-compliance with condition 1 of the permission. The email was filed with no further action taken by the relevant enforcement officer.

In light of this non-compliance with a permission condition, an enforcement officer should have followed up with the applicant and informed them of the non-compliance. Compliance activity such as informing the applicant of their obligations should have been taken, in accordance with their role as described in The Guidelines³⁸ and The Manual³⁹, and their obligations following an audit⁴⁰.

Non-compliances associated with an applicant should be recorded in their compliance history and should be considered when granting a VTA permission or undertaking any compliance activity, including enforcement action, if required.

For the rest of the sampled permissions, the auditors sighted hard copies of notification correspondence which met condition 1 of the permission conditions when operations progressed.

Enforcement officers stated that no formal enforcement action had ever been undertaken under the HSNO Act. However, enforcement training is provided at the Hazardous Substances Foundation and Refresher Courses and if identified non-compliance(s) required further escalation, the Ministry of Health would be involved. The Manual also has a section titled “Regulatory Environments” which provides guidance on compliance and enforcement.

Incidents and complaints

Obs 6: Locating incident reports within their on-site computer system was difficult

Enforcement officers stated that they have not received any complaints about their processes for issuing permissions. Should they receive a complaint they stated would be escalated to their medical officer of health. There is no formalised procedure within this public health unit for dealing with such complaints.

With regard to incidents and complaints associated with VTA operations for granted permission permissions, the enforcement officers stated that these were investigated where a risk to public health existed or there was a possible breach of the permission conditions. Incidents relating to public health and possible breaches of permission conditions are notified to the EPA. The enforcement officers stated that they were concerned about public health, and that animal health does not fall within their jurisdiction and role.

³⁸ The Guidelines, p 19.

³⁹ Section 11 - Introduction, p 8; section 11.4, p 12; section 11.8.5, p 26 The Manual.

⁴⁰ Action 10, clause 2.2, *Vertebrate Toxic Agent (VTA) Audits*, p 4.

There were no incidents (with public health implications) reported to the EPA during the audit period.

Only documents regarding an incident from 2011 could be easily located during the audit. This incident related to the application of sodium fluoroacetate outside of the operational area during a possum control operation. The most recent incident report received by the EPA from this public health unit was from 2014. This incident related to potassium cyanide bait bags found on trees on the track. Bait bags were removed.

Enforcement officers stated that all VTA incidents are discussed with their medical officer of health and notified to the Ministry of Health.

Providing permissions to the EPA

NC 8: Four permissions were not provided to the EPA within 20 working days after the date of issue

The Instrument of Delegation⁴¹ 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.

The public health unit usually sends a copy of the permission to the EPA. The audit confirmed that the sampled permissions had been provided to the EPA within 20 working days of issue. This is compliant with the Instrument of Delegation.

Following the audit, the EPA was advised of all permissions that were not granted by an enforcement officer. The number of permissions (18) exceeded the permissions held in the EPA records (14). The EPA identified that four permissions were missing from the EPA's database and had not been received by the required timeframe⁴².

Signage

Obs 7: Lack of clarity relating to responsibilities for monitoring and enforcing signage

The auditors were advised by the Team Leader, Health Protection that it was unclear who had the responsibility for monitoring and enforcing signage, which previously was one of their highest priorities when conducting audits of permissions for public safety.

Enforcement officers in this public health unit consider their role is to focus on the protection of public health. They use the risk assessment process to determine which VTA permission conditions to impose to achieve this goal.

⁴¹ Clause 7 of the Instrument of Delegation.

⁴² The four permissions were: Arohena Sector 2 Ground Addition - 18-3500-CM-WAPH-Ecofx-Arohena S2 Ground-Addition (issued on 19 November 2018, received by the EPA on 16 July 2019); North Waikato 6G2 East - 18-3503-AS-WAPH-Eco-Fx-East-of-Meremere (issued on 2 November 2018, received by the EPA on 16 July 2019); Te Hape Waimiha - 18-3501-CM-WAPH-EcoFx-Te Hape, Waimiha Ground (issued on 31 October 2018, received by the EPA on 1 July 2019); Taumarunui Rollback Ground - 18-3511-CM-WAPH-EcoFx-Taumarunui Rollback (issued on 28 November 2018, received by the EPA on 1 July 2019).

They have therefore continued to include MPCs relevant to signage in their granted permissions, contrary to the guidance received from the Ministry of Health.⁴³

The enforcement officers within this public health unit made this internal decision in consultation with enforcement officers from other public health units as they deem signage as the best communication tool to warn the public of the presence of VTAs in an area.

Signage for aerial 1080 operations is monitored by field audits. Operators advise when risks to public health have ended and notify the public health unit of their intention to remove signage (Model Permit Condition 3).

As part of their risk assessment, the enforcement officers decide to include signage conditions to allow for monitoring. This is an example of the enforcement officers exercising their power to vary, amend any condition of the permission in accordance with their risk assessment, regardless of different instructions received from the Ministry of Health. It is noted by the auditors that as it is the enforcement officer's role to protect public health in relation to VTAs, the monitoring and enforcement of signage should continue.

Opportunities for process improvement

Opp 1: Uncertainty in approach to the extent and type of audit required by the public health unit of permissions granted, as required under the Instrument of Delegation

The Waikato DHB standard operating procedure *Vertebrate Toxic Agent (VTA) Audits* is not clear to enforcement officers in directing them to conduct audits of all permissions as required by the Instrument of Delegation.

This standard operating procedure includes a flow chart to determine if a field audit should be conducted by a health protection officers.⁴⁴ The decision to undertake a field audit rests with the enforcement officer who granted the permission and the medical officer of health.⁴⁵

The flow chart to determine if a field audit is required⁴⁶ includes the following criteria:

- aerial 1080 operations
- high public concern
- new operator to the area
- history of non-compliance with conditions
- if it had been more than 12 months since the operator's last audit.

⁴³Application of Model Permit Condition for VTAs and other Hazardous Substances

⁴⁴ VTA Audit Flowchart, *Vertebrate Toxic Agent (VTA) Audits*, p 5.

⁴⁵ Action 1, clause 2.2, *Vertebrate Toxic Agent (VTA) Audits*, p 3.

⁴⁶ VTA Audit Flowchart, *Vertebrate Toxic Agent (VTA) Audits*, p 5.

The auditors noted that the underlying guidelines refer to the audit being undertaken by the public health unit⁴⁷ or by a health protection officer⁴⁸, without clarifying that an enforcement officer must ultimately sign off on the audit as required by the Instrument of Delegation⁴⁹ and The Manual⁵⁰.

The audited enforcement officers advised that it was impossible to audit all granted permissions with their resources. The enforcement officers attempt to conduct field audits for all aerial 1080 operations, but have not been successful in doing so. Due to the large geographical area they were responsible for, and with two or more operations sometimes occurring on the same day, it was not always possible to undertake field audits for all aerial 1080 operations in accordance with the Instrument of Delegation and the underlying guidelines.

Furthermore, the enforcement officers did not believe that all VTA permissions were high risk and required either field or desktop auditing because there had only been a minimal number of incidents relating to VTA permissions in relation to public health.

The EPA can review the Instrument of Delegation and Waikato DHBs view on the auditing requirement should be taken into consideration.

Opp 2: There are limited internal safeguards ensuring that enforcement officers are acting within their delegated authority

The Ministry of Health's contract with the public health unit requires that two internal audits of the public health unit portfolios must occur annually. The public health unit does not conduct internal audits to review issued permissions and to ensure that enforcement officers are acting within their delegated powers and have a consistent approach in granting permissions.⁵¹ This was confirmed by the Team Leader, Health Protection.

The auditors noted that, in practice, there is no system other than the peer review of application decisions to confirm that legal requirements in the granting of permissions have been met. Peer reviews were insufficiently documented and do not provide assurance that permissions were granted correctly. Management are also not involved in the permission process unless issues arise.

Therefore, there is a lack of oversight into the management of the VTA permission process, and how effective procedures are being implemented to grant VTA permissions in accordance with the Instrument of Delegation and various other key documents.

⁴⁷ The Guidelines, pp 29-30.

⁴⁸ Action 2, clause 2.2, *Vertebrate Toxic Agent (VTA) Audits*, p 3.

⁴⁹ Clause 6 of the Instrument of Delegation.

⁵⁰ The Manual, p 8.

⁵¹ Clause 4.2.4 of the Operational Agreement.

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 would allow them to issue a compliance order. This appears to be in line 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."

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 Waikato DHB training records
- 2 Waikato DHB's enforcement officers evidence of appointment
- 3 Waikato DHB HSNO Act training certificates
- 4 Waikato DHB VTA Procedures: *Vertebrate Toxic Agent (VTA) Applications* and *Vertebrate Toxic Agent (VTA) Audits*
- 5 Waikato DHB public health unit audit photographs

Arohena Sector 2

- 6 Arohena Sector 2 Aerial Application
- 7 Arohena Sector 2 Aerial Risk Assessment
- 8 18-3499-CM-WAPH-EcoFx-Arohena S2 Aerial Permission

Ngaroma Ground

- 9 Ngaroma Ground Application
- 10 Ngaroma Ground Risk Assessment
- 11 18-3513-CM-WAPH-EcoFx-Ngaroma Ground Permission

Mt Pirongia West

- 12 Mt Pirongia West Application
- 13 Mt Pirongia West Risk Assessment
- 14 18-3483-CM-WAPH-M&M-Mt Pirongia West Permission
- 15 Mt Pirongia West Notification Email

Arohena Sector 2 Aerial Extension

- 16 19-3515-CM-WAPH-EcoFx-Arohena S2 Aerial –Extension Permission

Glossary/abbreviations

Communications Guidelines	ERMA Communications Guideline for Aerial 1080 Operations, March 2009
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
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 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. 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]
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)