

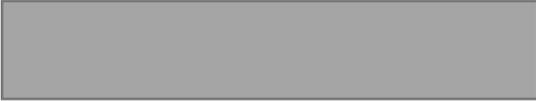


MEMORANDUM

File Ref: POL 05 01 Zoo 2017

To: Dr Fiona Thomson-Carter, General Manager Hazardous Substances
and New Organisms

Copy to: Mark Patchett, General Manager Strategic & Regulatory Services


From: 

Date: 27 April 2018

Subject: Approval of proposed standard for zoo containment facilities

Purpose

This memorandum (memo) seeks your approval on the proposed standard for zoo containment facilities (proposed standard).

Previous memoranda on the draft Standard

Previous memos relating to the proposed standard, which were submitted to you and to the Chief Executive Officer, included:

- Memo dated 10 February 2017 to you, outlining the history of the standard for zoo containment facilities and the issues that arose at the time;
- Memo dated 29 August 2017 to the Chief Executive Officer, providing an update following the meeting with New Zealand zoos and government agencies; and
- Memo dated 11 December 2017 to the Chief Executive Officer, seeking approval for public consultation on the proposed standard.

The memos listed above are attached as Appendix 1.

Background

Zoos are regulated under a variety of legislation including the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Biosecurity Act 1993, the Animal Welfare Act 1999, and the Health and Safety at Work Act 2015. From time to time, under section 11(1)(fc) of the HSNO Act, the

Environmental Protection Authority (EPA) may approve a standard, which sets out rules to prevent escape of zoo animals, that are also new organisms, from zoo containment facilities (zoos). The standard is enforced by the Ministry for Primary Industries (MPI), who monitors the operation of zoos to ensure that animal welfare and biosecurity requirements are met. In addition, workplace health and safety aspects of zoos are governed by WorkSafe New Zealand (WorkSafe).

The MAF Biosecurity New Zealand Standard 154.03.04 Containment Facilities for Zoo Animals (current standard) was approved by the Environmental Risk Management Authority under the HSNO Act, and replaced the Zoological Gardens Regulations 1977 that were revoked on 28 July 2003. The current standard contains outdated information, such as previous government agency names and logos, and signing authorities. It also contains provisions relating to animal welfare, and workplace health and safety, which are outside the scope of the HSNO Act.

Why outcome-based standard?

The current standard consists of prescriptive requirements, which are out-of-date and too inflexible to keep pace with constantly evolving international best practices and innovation. The Zoo and Aquarium Association (ZAA) stated in their written submission (ZAA formal feedback) that zoos should be allowed to adopt innovative practices for non-dangerous animals like the zoo free-ranging programme (i.e. letting those animals move around and interact with visitors during opening hours in their designated containment areas). While it is an internationally-accepted practice¹, such practice is not allowed in New Zealand under the current standard.

Prescriptive regulation is desirable in situations where the risks are well-known, there is little need for innovation, and the existing technologies are known to work well. However, for zoos, the public view on animal captivity is changing, and there is growing interest in animal welfare and conservation². In addition, recent studies provide new information about zoo animals, and suggest that current way of zoo containment and exhibits for those animals may be inadequate for the animals' needs and effective containment³. There are examples of innovative zoos tailored to reflect the latest research⁴.

Therefore, a new outcome-based standard is being proposed, which puts more emphasis on specifying a performance standard for the desired outcome and does not constrain how compliance is to be achieved. This approach will allow more flexibility for innovation and efficiency than prescriptive regulation.

¹ For example, the Singapore Zoo, the Smithsonian's National Zoo (US), and the Zoo Atlanta (US) have allowed tamarin to free-range on zoo grounds.

² Worland (2017) in his TIME Magazine article "The Future of Zoos: Challenges Force Zoos to Change in Big Ways" refers to the changing public views on zoos and animal welfare. ZAA also emphasised the importance of animal welfare in zoos during the meetings with the EPA and other government agencies on 28 August 2017 and 2 October 2017.

³ Cameron EZ, Ryan SJ (2016) *Welfare at Multiple Scales: Importance of Zoo Elephant Population Welfare in a World of declining Wild Population* shows how elephants thrive best when they have social connections. Other studies (including one by Brian Hare, Duke University) suggest many animal species are far smarter and more sentient than previously understood, giving new insights into how they may suffer from anxiety and depression when they are removed from nature.

⁴ Examples of innovative zoos include Zoo360 at the Philadelphia Zoo (a campus-wide trail system for animals to transform the experience of animals in captivity), and Polar Bear Point at the Saint Louis Zoological Park (a spacious containment allowing polar bears to have a social environment).

To ensure effective enforcement and quality assurance, the proposed standard will be supported by a Quality Management System (QMS) for each zoo. The QMS will provide specific measures to describe how the individual zoo will comply with the requirements of the proposed standard. MPI, with the support of zoo experts when necessary, will review the QMS for each zoo to ensure the adequacy of those measures to comply with the relevant legal requirements, before MPI approves the relevant zoo as a containment facility under the Biosecurity Act 1993.

Previous discussions with zoo industry group and government agencies

On 28 August 2017, MPI coordinated a meeting between New Zealand zoos and government agencies including ZAA, MPI, WorkSafe, Department of Conservation (DOC), and the EPA. During the meeting, they discussed the earlier draft of the proposed standard developed by the EPA. ZAA, who represented most zoos in New Zealand, committed to providing their comments on the proposed standard. The EPA also agreed to provide assistance to ZAA in developing a 'straw man' QMS.

As a result, another meeting was held between ZAA and the EPA on 2 October 2017, where ZAA formal feedback was discussed. It was acknowledged by ZAA that while some ZAA comments related to containment of zoo animals under the proposed standard, many comments related to other aspects that were relevant to MPI (for example, animal welfare). The EPA offered to facilitate discussion between ZAA and MPI regarding those comments.

ZAA also expected that the development and the review of the QMS by an expert committee comprising MPI and zoo experts⁵ would help MPI enforce the standard consistently, and ensure that risks are managed appropriately.

After taking into consideration ZAA comments relating to containment, the EPA made minor changes to the proposed standard. Subsequently, the proposed standard was forwarded to MPI for a further review, who provided additional comments. MPI's comments were incorporated into the proposed standard before the public consultation began.

Consultation

The consultation on the proposed standard commenced on 16 January 2018 and ended on 27 February 2018.

The consultation document was made available on the EPA website, and sent to interested parties who the EPA considered would be likely to have an interest in the proposed standard in accordance with section 11(2) of the HSNO Act.

The EPA also issued a media release to inform the general public of the consultation, which was published by the North Shore Times, Wainuiomata News, North Harbour News, Newsie, and Rodney Times in February 2018. In addition, there were Facebook posts and Twitter tweets.

⁵ During the meeting on 28 August 2017, MPI endorsed the establishment of an expert committee comprising MPI and zoo experts to consider the adequacy of measures in the QMS to meet zoo standard and the HSNO Act approval outcomes. However, MPI later confirmed that their review of QMS would be supported by zoo experts when necessary.

The consultation document sought feedback on 10 questions regarding the proposed standard.

Submissions

Three submissions were received during the consultation period from the following submitters:

- Vicki Melville, Ministry for Primary Industries;
- Eden Gray and Samantha Botting, Otago Museum; and
- [REDACTED]

All submissions are available on the EPA website, with confidential information redacted as appropriate.

DOC submitted via email a late submission to the EPA and MPI on 12 March 2018. However, all of its comments related to transitional facilities, which are approved and regulated by MPI under the Biosecurity Act 1993, and appeared to be intended for MPI's consultation on transitional facilities. Therefore, their submission was not analysed for the purpose of the report on submissions on the zoo standard.

Many comments received from the submitters did not specifically relate to the requirements of the proposed standard, but concerned the enforcement of, or the compliance with, the standard.

[REDACTED] expressed a number of concerns on the proposed standard. However, they were a reiteration of ZAA formal feedback and there was no new information.

The submitters also suggested some minor amendments to the proposed standard to improve clarity and reduce uncertainty.

On 7 March 2018, the EPA sent out emails acknowledging the receipt of the submissions. The EPA also informed Ms Gray and Ms Botting (Otago Museum) of MPI's consultation on transitional facilities, as they made comments relating to transitional facilities. MPI's consultation closed on 23 March 2018.

[REDACTED] oversaw the consultation process to ensure that the affected parties were consulted, and the submissions were considered, appropriately.

The report on submissions, which contains the proposed EPA response to the submissions, is attached as Appendix 2.

Final draft of the proposed standard

Subsequent to the consultation, the EPA took into account the feedback from the submitters and made minor amendments to the proposed standard.

The final draft of the proposed standard was then reviewed and agreed upon by:

- [REDACTED]; and
- [REDACTED]

The final draft of the proposed standard is attached as Appendix 3.

Approval of the proposed standard

Standards for containment facilities are approved by the EPA under section 11(1)(fc) of the HSNO Act. As of 6 May 2016, the EPA Board delegated the powers and functions exercisable by the EPA under section 11(1)(fc) of the HSNO Act to the Chief Executive Officer. On 13 March 2018, the Chief Executive Officer further delegated the powers and functions to approve standards for containment facilities to you.

If you approve the proposed standard, our proposal is to inform the EPA Board and the Associate Minister for the Environment prior to the publication of the approved standard on the EPA's website.

The proposed standard, if approved, will come into force on 1 July 2018. However, during the proposed transitional period (which is between 1 July 2018 and 30 June 2019), the users of the proposed standard may choose to comply with the current standard.

Proposed post-approval steps

If you decide to approve the proposed standard, we propose to:

- inform the submitters of the decision individually. Proposed individual responses to the submitters are attached as Appendix 4. It is proposed that the EPA, as a proactive and customer-centric regulator, offers to facilitate a meeting between MPI and [REDACTED] to discuss [REDACTED] concerns regarding compliance with, and the enforcement of, the approved standard;
- inform the interested parties who have been previously contacted by the EPA regarding the consultation (including the zoos who will be required to comply with the approved standard) of the decision;
- work with the Communications team to publish the approved standard, and inform the general public of the decision through a media release and the EPA's information channel (such as the Bulletin, the EPA Twitter account); and
- work with the Legal, Regulation, and Communications teams to publish this decision memo, with any necessary redactions, on the EPA's website as part of Operation Open Book.

Recommendation

It is recommended that you approve the proposed standard under delegated authority under section 11(1)(fc) of the HSNO Act, and the proposed post-approval steps specified above.

Approval

Approved/~~Not approved~~

Name:

Position:

Comment:



Dr Fiona Thomson-Carter
General Manager Hazardous Substances and New Organisms

Appendix 1: Previous memos regarding the proposed standard

Memo to Dr Fiona Thomson-Carter, General Manager Hazardous Substances and New Organisms, dated 10 February 2017

Memo to Dr Allan L Freeth, Chief Executive Officer, dated 29 August 2017

Memo to Dr Allan L Freeth, Chief Executive Officer, dated 11 December 2017

Appendix 2: Report on submissions

Appendix 3: Final draft of the proposed standard

Appendix 4: Proposed responses to the submitter