

## MAF BIOSECURITY AND ERMA NEW ZEALAND RESPONSE TO THE RECOMMENDATIONS OF THE MCGREGOR REPORT

ERMA New Zealand and the Ministry of Agriculture and Forestry (MAF) Biosecurity have considered the recommendations arising from the McGregor report. The recommendations include possible legislative changes to the Hazardous Substances and New Organisms (HSNO) and Biosecurity Acts, and changes at the operational level to improve the management of such incidents and co-ordination between the agencies involved (principally ERMA New Zealand and MAF).

Legislative change is a matter for the government to consider. Therefore this response concentrates on the improvement of operational arrangements which can be altered by MAF Biosecurity and ERMA New Zealand, with only a brief mention of legislative change.

### A Legislative Changes.

The report recommends that:

1. MAF and ERMA New Zealand make submissions to the review of the new organisms provisions of the HSNO Act on their experiences and difficulties in interpreting and operating the Act during the handling of this incident. (Section 3.6 of the report).
2. ERMA New Zealand and MAF consider whether and how the HSNO Act might be amended to clarify the roles, responsibilities and powers of the Authority, the Chief Executive of the MAF, and persons appointed as enforcement officers by the Chief Executive of MAF, in enforcing the provisions of the HSNO Act; and to clarify and give better guidance on operational relationships between the Authority, ERMA New Zealand and enforcement agencies and enforcement officers. (Sections 5.2 and 5.6 of report).
3. A review of relevant provisions of the Biosecurity Act takes place in parallel with the review of the new organisms provisions of the HSNO Act so that the two Acts are better aligned, and 'seamless' in their operation. (Section 3.9 of report)
4. MAF (in consultation with other departments and agencies, including MfE, ERMA New Zealand, and the Ministry of Health), consider whether and how the Biosecurity Act might be amended so that unintentional release into the uncontrolled New Zealand environment of any new organism (including a GMO), that has not been approved under the HSNO Act and which is not an unwanted organism, falls within the purview of the Biosecurity Act. (Section 3.8 of the report).
5. MAF and MfE investigate whether and how the HSNO Act might be amended to align it with the Biosecurity Act with respect to cost recovery. (Section 8.4 of the report).

## **Response:**

Possible changes to the HSNO Act to reflect the recommendations of the Royal Commission are currently being considered by government departments, based on submissions made on a discussion paper from the Ministry for the Environment. The recommendations of this report have been drawn to the attention of the departments involved in this process and will be considered in the context of other proposed changes. The recommendations from the McGregor report highlight the need to consider the roles of the agencies involved, prior to determining the scope and need for legislative change.

## **B Operational changes**

In this area responses are given for each of the recommendations:

1. That MAF and ERMA New Zealand make appropriate preparations for handling similar or more serious incidents involving less cooperative companies or individuals. (Section 2.8 of the report).

**Response:** Action is already in hand to extend and renegotiate the operational agreement (memorandum of understanding) between MAF and ERMA NZ to cover the handling of similar incidents in the future. However, the issue of lead roles must first be resolved, particularly if enforcement action is necessary, e.g. the use of compliance orders under the HSNO Act. The arrangements need to provide enforcement officers with clear terms of reference which are cleared through a single point of authority.

2. That ERMA New Zealand and MAF review and revise their memorandum of understanding (MoU) on their inter-relationships, and their operational agreements, in the light of their experiences from this incident; (Section 3.13) work continuously to improve their operational relationships for handling breaches of the new organisms provisions of the HSNO Act (Section 3.14); and develop a generic framework for management of future incidents, based on the experiences from this incident. (Section 6.4 of the report).

**Response:** The suggestion that a generic framework for dealing with future incidents should be developed is particularly appropriate and will be the subject of joint work by MAF Biosecurity and ERMA New Zealand. ERMA New Zealand is developing a set of policy guidelines for handling the different elements of any future inadvertent release of any genetically modified (GM) plants. This will provide a high level point of reference. Further planning will be needed after adoption of the policy to ensure that procedures are in place to give effect to this policy.

3. That MAF prepare an operational protocol, and performance standards, for collection, despatch and monitoring of seed (and other biological material) for testing for GM contamination where there is urgency in obtaining results; and give staff training in the operation of the protocol. (Section 4.2 of the report).

**Response:** This work will be scheduled into MAF's or ERMA NZ's forward work programme depending on the respective roles agreed and adopted by the two agencies.

4. That MAF and ERMA New Zealand confer on the training of enforcement officers; draw up a protocol outlining their respective roles and responsibilities for guiding and directing enforcement officers in the discharge of their duties (Section 5.6); and take steps to ensure that persons appointed to enforce the provisions of the HSNO Act satisfy the requirements of the HSNO (Personnel Qualifications) Regulations 2001. (Section 5.4 of the report).

**Response:** There is already liaison between MAF and ERMA New Zealand on the training and appointment of HSNO enforcement officers. However, the ability to prepare for such incidents is limited by the fact that presently, enforcement officers can only be appointed by MAF when the circumstances of an incident are known. These circumstances will vary between incidents but the case for a general protocol to be drawn up between MAF and ERMA New Zealand will be investigated.

5. That MAF review every two years the effectiveness of its import health standards and border detection and testing protocols for preventing the entry to New Zealand of unapproved GMOs (Section 6.2).

**Response:** The development and review of import health standards and testing protocols for border detection of GM organisms is an ongoing process within MAF. By January 2003, three testing protocols (for maize/corn, oilseed rape and soybean) will be in place to ensure that imported seed of these crops do not contain unapproved GM seed. MAF is aware that the science of genetic modification is developing rapidly and that the import requirements must be reviewed regularly to ensure that appropriate measures are in place to prevent the importation of unapproved GM organisms.

6. That MAF and ERMA New Zealand, as part of their contingency planning for handling future incidents, formulate a communications strategy that is open, transparent and fair to all parties, and which recognises the interests of the government, and also the interests of commercial organisations and other parties or individuals directly involved. (Section 7.2 of the report).

**Response:** Both organisations have procedures in place to ensure that incidents of this sort are dealt with openly and transparently. Further work will be undertaken to ensure that there is a common understanding between the two organisations on stakeholder communications and that all parties are kept appropriately informed.

7. That MAF and ERMA New Zealand assess the resources deployed (in both monetary and human capital terms) in the handling of this incident, identify any significant gaps or weaknesses, estimate the resources needed to handle larger and more serious incidents in the future, and develop a strategy for securing those resources at short notice. (Section 8.3 of the report).

**Response:** MAF and ERMA New Zealand agree that this should be a part of the follow up work. Most of the costs in the case of Pacific Seeds fell to MAF so they will take the lead role. A significant difficulty in this area is that incidents are inherently unpredictable so it is correspondingly difficult to estimate the resources required.