



In Confidence

Cabinet

CAB Min (08) 28/1C

Minute of Decision

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Management of Genetic Modification in New Zealand

Portfolio: Environment

On 21 July 2008, following reference from the Cabinet Business Committee (CBC), Cabinet:

Background

- 1 **noted** that in July 2001, the Royal Commission on Genetic Modification reported to the government on the issues surrounding genetic modification (GM) in New Zealand, and recommended a precautionary approach which preserved options for the future;
- 2 **noted** that the Government Co-operation Agreement with the Green Party states that:
“during this term of Parliament work will be undertaken to increase the certainty around the non-GM producers to maintain GM free production and be able to identify their products as such to meet market access requirements”;
- 3 **noted** that reference to “GM crops” in the paper under CAB (08) 334 includes other GM organisms (GMOs), including veterinary and human medicines that are, or contain, GMOs, where that is practicable;

Controls imposed on GMOs under the Hazardous Substances and New Organisms Act 1996

- 4 **invited** the Minister for the Environment to submit to the Cabinet Legislation Committee, by 31 August 2008, following necessary consultation:
 - 4.1 an amendment to the Hazardous Substances and New Organisms (Methodology) Order 1998 (the Methodology Order); or
 - 4.2 new regulations under section 140(1) of the Hazardous Substances and New Organisms Act 1996 (the HSNO Act); or
 - 4.3 both the amendments referred to in paragraph 4.1 and the regulations referred to in paragraph 4.2:

to prescribe requirements for segregation and traceability schemes, that the Environmental Risk Management Authority (ERMA) would have particular regard to

imposing as controls when considering applications to conditionally release a GMO, particularly any GM crop;

- 5 **invited** the Minister for the Environment to provide drafting instructions to the Parliamentary Counsel Office to give effect to the legislative amendments or new regulations, or both, referred to in paragraph 4 above and paragraph 6 below;
- 6 **noted** that the Minister for the Environment proposes that the amendment to the Methodology Order or new regulations, or both, would reflect the requirements of the current draft code of practice template for the seed crop industry following consultation in that context;
- 7 **noted** that an amendment to the Methodology Order or new regulations, or both, may not be able to require that ERMA impose mandatory controls, as ERMA has a discretionary power under section 38D of the HSNO Act to impose controls in respect of conditional release approvals for new organisms;
- 8 **noted** that any amendment to the Methodology Order, imposed by ERMA as a condition on an application, might be open to a challenge as being *ultra vires* section 9 of the HSNO Act, and further, that the amending order, or regulations, or both, could be the subject of a complaint to the Regulations Review Committee under Standing Order 315;
- 9 **noted** that the Minister for the Environment's powers to direct ERMA are limited, and that legislative amendment to implement some of these proposals as mandatory controls would be required;
- 10 **directed** the Ministry for the Environment to provide further advice to the Cabinet Policy Committee (POL) by 1 December 2008 on any amendments to the HSNO Act required to implement these proposals as mandatory controls;

Public register of GMO approval locations

- 11 **directed** officials to implement a public register of GM crop site locations and location controls dictated under future GMO approvals, excluding contained field tests;
- 12 **noted** that officials consider that inclusion of contained field trials in any public register of GMO approval locations would increase the administrative burden but offer no perceivable gain to nearby non-GM producers, whereas the alternative view is that there have been sufficient breaches of containment in field tests so far that they ought to be included;
- 13 **noted** that such a register would be held by the Ministry of Agriculture and Forestry (MAF), as MAF would hold the most up-to-date site locations for field tests and sites of release for conditional releases of GMOs;

Code of practice for segregation

- 14 **noted** that a segregation model exists based on the principles and best practice for segregation of crops;
- 15 **directed** MAF to publicly consult on the proposed new model for mandatory segregation (a six-week consultation period, with immediate start);

Framework for traceability

- 16 **noted** that the European Union has a traceability framework for GM crops;
- 17 **directed** officials to report to POL by 31 August 2008 on how to adapt the European Union's traceability framework to be consistent with New Zealand's regulatory system;
- 18 **noted**, in respect of the above proposals for the code of practice for segregation, and the framework for traceability:
- 18.1 that section 17 of the HSNO Act prevents the Minister for the Environment from directing ERMA to make any specific control a mandatory requirement of any approval, and a change to the HSNO Act would be required to change this limitation;
- 18.2 the amendment to the Methodology Order or new regulations, or both, proposed in paragraph 4 to prescribe requirements for segregation and traceability schemes that ERMA would have particular regard to imposing as controls when considering any application to conditionally release a GM crop;

Public register of non-compliance

- 19 **directed** officials to enhance the current non-compliance register for all field-tests and conditional release approvals for new organisms to:
- 19.1 continue to provide annual reports on non-compliance;
- 19.2 summarise audit findings on compliance with requirements;
- 19.3 notify reasons for non-compliance;
- 19.4 notify any new or additional controls as a result of non-compliance;
- 20 **directed** officials to provide links, where relevant, between the public register of GM crop locations on the MAF website (referred to in paragraphs 11 and 13 above) and the enhanced non-compliance register on the ERMA website (referred to in paragraph 19 above);

Labelling of GM propagative material

- 21 **noted** that mandatory labelling of GM propagative material at the point of sale could occur by means of Consumer Information Standards (CIS) regulations prescribed in accordance with section 27 of the Fair Trading Act 1986
- 22 **noted** that the Ministry of Consumer Affairs has advised that consultation requirements of the Fair Trading Act 1986 mean that CIS regulations could not be implemented before October 2010;
- 23 **directed** officials, led by the Ministry of Consumer Affairs, to draft a CIS under the Fair Trading Act 1986 for the labelling of GM propagative material for implementation as soon as is practicable, and to report to POL to gain approval for the consultation required by statute;

Local government in GM crop management

- 24 **noted** that template models of district plan changes and section 32 processes under the Resource Management Act 1991 (the RMA) have been developed that will assist territorial authorities in designing RMA changes to restrict the use of GMOs in their region, should they choose to do so;
- 25 **noted** that officials advise that district plan changes using the template models might not survive a challenge unless territorial authorities are able to provide evidence of environmental effects and risks that have not already been addressed by ERMA, an unlikely event in the view of officials;

Domestic liability regime for living modified organisms

- 26 **noted** that, following the Royal Commission on Genetic Modification report, the government gave detailed consideration to a range of additional controls, including strict liability for harm caused by GM, compulsory insurance, statutory compensation, remediation funds, and the imposition of bonds, and decided not to support any of those options;
- 27 **noted** that in February 2003, the Cabinet Business Committee (CBC):
- 27.1 noted that while existing liability rules will not always operate effectively to encourage precaution and provide compensation in relation to GM, this is not unique to GM and so devising a liability regime solely on the basis of a GM/non-GM distinction would not be sound in principle;
- 27.2 agreed that to strengthen incentives to comply with the regime, the HSNO Act should be amended to cover new organisms, to include a strict civil liability rule for harm caused by non-complying activities and a civil penalty regime for breaches;

[CBC Min (03) 3/16]

- 28 **noted** that in May 2008, CBC:
- 28.1 noted that New Zealand has yet to finalise a domestic liability regime for living modified organisms (LMOs);
- 28.2 invited the Minister for the Environment to provide a paper to Cabinet on a proposed domestic liability regime for LMOs, as soon as practicable;

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- 29 **noted** that New Zealand's existing common law liability framework applies to harm caused by GM activities, and that this is supplemented by a civil penalty regime for breaches of the HSNO Act and strict civil liability regime for harm caused by activities in breach of the HSNO Act involving new organisms;
- 30 **noted** that further analysis suggests the current domestic liability regime for GMOs covers foreseeable risks and eventualities;

- 31 **noted** that:
- 31.1 New Zealand has participated in negotiations on liability and redress for damage resulting from the trans-boundary movement of GMOs under the Cartagena Protocol on Biosafety (the Cartagena Protocol);
 - 31.2 the recent meeting of the Parties agreed to work towards legally-binding rules and procedures on an “administrative approach” aimed at remediating damage to the conservation and sustainable use of biological diversity, and non-binding guidelines on civil liability (with a legally-binding component that would identify key elements of a civil liability regime);
 - 31.3 the final instrument will not be formally settled until early 2010;
- 32 **noted** that, as international negotiations are still continuing on liability and redress under the Cartagena Protocol, further consideration of New Zealand’s domestic liability regime should be deferred until the conclusion of those negotiations;
- 33 **invited** the Minister for the Environment to report back to POL following the conclusion of negotiations on liability and redress under the Cartagena Protocol with recommendations on whether a review of New Zealand’s domestic liability regime is needed;

Publicity

- 34 **noted** that the Minister for the Environment intends to publicly release the submission under CAB (08) 334, including Cabinet’s decisions;
- 35 **noted** that the Minister for the Environment intends to make public and media announcements about the decisions at the relevant time.

Secretary of the Cabinet

Reference: CAB (08) 346; CBC Min (08) 20/24

Secretary’s note: This minute replaces CBC Min (08) 20/24. Cabinet added new paragraphs 30, 32 and 33.

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