

IN CONFIDENCE

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Minamata Convention on Mercury – regulatory measures to enable ratification – final policy decisions

Proposal

- 1 This paper seeks Cabinet approval on policy recommendations to implement specific obligations required before New Zealand can ratify the Minamata Convention on Mercury (the Convention). This follows consultation on proposals in 2020 [ENV-20-MIN-0001 and ENV-20-MIN-0008 refer].

Relation to government priorities

- 2 This proposal fits with the Government's commitment to 'multilateral approaches to resolve multilateral issues'.

Executive Summary

- 3 The Convention is an international agreement to protect human health and the environment from the effects of mercury. New Zealand signed the Convention in 2013 but cannot ratify it until the relevant obligations have been implemented in domestic law.
- 4 In early 2020, Cabinet invited me to consult on:
 - amendments to the Resource Management (National Environmental Standards for Air Quality) 2004 (NES-AQ) relating to mercury discharges to air.
 - amendments to the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (the Imports and Exports Order) under the Imports and Exports (Restrictions) Act 1988 to control the import and export of mercury, and certain mercury-added products
 - creation of regulations under the Waste Minimisation Act 2008 (WMA) to prohibit the sale and manufacture of certain mercury-added products.
- 5 Submissions were broadly supportive of the proposals. Following consultation, I recommend minor changes to the proposals as described in the discussion documents. These are clarity on when industries that emit mercury would be required to adopt best available techniques or best

IN CONFIDENCE

environmental practices (BAT/BEP); a requirement for import and export permits for certain specific uses of mercury and mercury-added products; and clarity on the scope of the prohibition of high pressure mercury vapour (HPMV) lamps for general lighting purposes.

- 6 I am now seeking agreement to implement regulations to:
- control the import and export of mercury
 - prohibit the sale, manufacture, import and export of certain mercury-added products
 - control the import and export of mercury-added products for certain uses
 - control mercury emissions to air in certain industries.
- 7 I aim to submit New Zealand's instrument of ratification to the United Nations by early-mid 2022.

Background*Overview of the Minamata Convention on Mercury*

- 8 The Convention was negotiated due to concerns about the accumulation of mercury in aquatic ecosystems from human activities. Ninety-one countries signed in 2013, including New Zealand. It entered into force for countries that had ratified on 16 August 2017. At 20 April 2021, 131 other countries had ratified the Convention.

- 9 New Zealand completed its Parliamentary Treaty Examination and National Interest Analysis processes for the Convention in 2014. These concluded that New Zealand should ratify. Key reasons include protection of the Pacific fishery and New Zealanders from risks associated with mercury and its compounds. Ratifying is also helpful to international relations.

Three domestic regulatory changes are required to ratify

- 10 Three regulatory amendment proposals required to ratify, in line with Cabinet's 2013 agreement [(CAB Min 913) 33/6 refers], were consulted on in 2020. These were:
- a prohibition on the manufacture, sale, import and export of certain mercury-added products under the Waste Minimisation Act 2008 (WMA) and Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (Imports and Exports Order). These products are set out in Annex A of the Convention
 - a permitting system for the trade in mercury under the Imports and Exports Order
 - regulation of particular mercury-emitting processes under the Resource Management Act 1991 (RMA) and Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (NES-AQ).

Analysis*Resource Management (National Environmental Standards on Air Quality) Regulations 2004 proposed amendment*

IN CONFIDENCE

- 11 Proposed amendments to the NES-AQ were consulted on in 2020 and I have considered a report prepared by the Ministry for the Environment on submissions with recommendations (in accordance with section 46A(4)(c) of the RMA).
- 12 Consultation on the proposed additions received broad support. Clarity was sought on when a new or 'substantially modified' consent requires the Convention's agreed BAT/BEP. I am recommending definition of 'substantially modified' as modification of plant that results in a five percent or more increase in mercury emissions to air.
- 13 I also recommend the NES-AQ be amended by adding new provisions that manage the use and discharge of mercury to air by:
- prohibiting the use of mercury in facilities used in the manufacturing processes listed in Annex B of the Minamata Convention. These are chlor-alkali production; acetaldehyde production in which mercury or mercury compounds are used as a catalyst; vinyl chloride monomer production; sodium or potassium methylate or ethylate; and production of polyurethane using mercury-containing catalysts. Note that these processes are not currently undertaken in New Zealand.
 - requiring the consideration of BAT/BEP (guidance agreed by Parties to the Convention in September 2017; and on the Minamata Convention website, to be incorporated by reference) for any planning or consenting decisions about air discharges of mercury from new or substantially modified point sources as listed in Annex D of the Minamata Convention on Mercury - so that Annex D point sources that meet BAT/BEP guidelines are permitted and those that do not are prohibited. Annex D point sources are coal-fired power plants, coal-fired industrial boilers, smelting and roasting processes used in the production of non-ferrous metals, cement clinker production facilities and waste incineration facilities.
- 14 These amendments are to be made in accordance with statutory requirements under sections 44 and 46A of the RMA for amending an NES. As required, I have considered a recommendations report prepared by the Ministry for the Environment on submissions with recommendations (in accordance with section 46A(4)(c) of the RMA).
- 15 Based on the recommendations report and the Regulatory Impact Statement, and subject to completion of the section 32 report on the regulations, I consider this proposal is aligned with the purpose of the RMA.
- Amending the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 and creating new regulations under the Waste Minimisation Act 2008*
- 16 In 2020, I consulted on proposals to control the trade in mercury and mercury-added products by:
- creating new regulations under the WMA to prohibit the manufacture and sale of mercury-added products listed in Annex A Part 1 of the Convention; and

I N C O N F I D E N C E

- amending the Imports and Exports Order under the Imports and Exports (Restrictions) Act 1988 to prohibit the import and export of mercury except in limited circumstances, and to prohibit Annex A Part 1 mercury-added products.

17 Submissions were generally supportive of the proposals. There was support for a lower proposed mercury content than required by the Convention for compact fluorescent lamps of 2.5mg per lamp burner for lamps less than or equal to 30 watts, consistent with Australia's intentions and requirements in the European Union.

18 I recommend that the proposals proceed as consulted with minor alterations to timing and for clarity, discussed below.

Clarity on scope of high pressure mercury vapour lamps

19 Clarity was requested by lighting industries about the scope of "High Pressure Mercury Vapour (HPMV) lamps for general lighting purposes".

20 Discussions with other countries confirmed the intention of this category is for lamps for everyday lighting to not contain mercury. Everyday lighting includes street lamps, lighting in offices and homes. Specialist lighting, high pressure sodium lamps and metal halide lamps, high intensity discharge lamps on motor vehicles, and high pressure UVC-HP lamps for sterilisation are out of scope. This definition was tested with stakeholders. I recommend that this clarification is provided in the regulations.

Certainty about products for essential uses excluded from prohibition

21 Annex A of the Convention allows for mercury-added products for certain uses. These are covered by other regulatory requirements in New Zealand. I recommend the following uses of mercury and mercury-added products be allowed without a permit

- products essential for civil protection and military uses
- products for research, calibration of instrumentation, for use as a reference standard
- vaccines containing thiomersal as a preservatives.

22 Mercury-added products used in traditional or religious practices are prohibited through other relevant legislation and regulation.

23 I recommend that, to avoid potential misuse, the Import and Exports Order is amended so that the import and export of mercury and the following mercury-added products, where no feasible mercury-free alternative for replacement is available, require a permit:

- switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays, and measuring devices.

24 In order for a permit to be issued the Environmental Protection Authority (EPA), as the permitting agency, will be required to ensure that:

I N C O N F I D E N C E

- mercury to be imported has not been sourced from primary mercury mining or the decommissioning of a chlor-alkali facility;
- mercury to be exported has written consent from the receiving country;
- mercury to be exported is for a use allowed under the Convention or for environmentally sound storage;
- if export is for a non-Party to the Convention, additional requirements are met, including a certification that the non-Party has measures in place to protect human health and the environment and will comply with the relevant provisions of the Convention.

Regulations under the Waste Minimisation Act 2008

- 25 In recommending these regulations, I have considered the advice of the Waste Advisory Board and considered if reasonably practicable alternatives are available, as required by section 23(2)(b) of the WMA. I am satisfied that alternatives are available for the items proposed for prohibition.

Imports and Exports (Restrictions) Prohibition Order (No 2) 2004

- 26 Regulations under the Imports and Exports Order can be made to prohibit specified goods from being imported if it is in the public interest to do so, and/or from export if it is necessary to give effect to international obligations.
- 27 These regulations will prevent mercury-added products from entering New Zealand, which will protect human health and the environment. They will prevent non-essential export of mercury-added products.
- 28 While the Minister of Commerce and Consumer Affairs has responsibility for the Imports and Exports Order, as Minister for the Environment I have the authority to recommend policy changes on his behalf.

Timing of implementation

- 29 Regulations under the WMA, the Imports and Exports Order and the NES-AQ would normally enter into force 28 days after the regulations are gazetted. However, some of the proposed restrictions on mercury-added products would engage transparency provisions under the World Trade Organisation (WTO) Agreement on Technical Barriers to Trade (TBT provisions). New Zealand has an obligation to provide a reasonable interval (six months) between publication of the final measures and their entry into force.
- 30 I recommend that, for efficiency, all proposed regulations will come into force six months after New Zealand notifies the WTO of Cabinet's decision. This will also allow regulatory bodies and stakeholders time to prepare for implementation of the new regulations.
- 31 The regulatory amendments will be brought into force on a date appointed by the Governor-General by Order in Council. Officials will ensure that this is the same date as the entry into force of the Convention for New Zealand.
- 32 These import and export restrictions fall outside of the Trans-Tasman Mutual Recognition Arrangement.

IN C O N F I D E N C E

Compliance, monitoring and enforcement of proposed regulations

- 33 Compliance, monitoring and enforcement of proposed regulatory changes to the NES-AQ will be conducted by councils as part of their usual requirements.
- 34 Monitoring and enforcement of regulations under the WMA is carried out by the Ministry for the Environment, which is the primary regulator for the WMA.
- 35 Permitting for the Imports and Exports Order is carried out by the EPA. New Zealand Customs Service enforces the Imports and Exports Act at the border.

Financial Implications

- 36 A ban on the sale and manufacture of mercury-added products would require additional compliance, monitoring and enforcement resource of a maximum of 1 FTE for at least the first two years. Some resourcing will also be required by the EPA to administer the import and exports permits.

Legislative Implications

- 37 Following Cabinet approval of these final policy proposals, I intend to issue drafting instructions to the Parliamentary Counsel Office. After final decisions have been made by Cabinet, regulations will be made by Order in Council under the WMA, the Imports and Exports Order, and NES-AQ.

s 9(2)(h)



Impact Analysis

- 40 A Regulatory Impact Statement was prepared in accordance with Cabinet's impact analysis requirements and submitted at the time that Cabinet approval was sought to consult on the regulatory proposals relating to ratification of the Convention. This Regulatory Impact Statement has been updated following public consultation and is attached.

Population Implications

- 41 There are no specific implications for particular population groups.

IN CONFIDENCE**Human Rights**

- 42 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 43 The Energy Efficiency and Conservation Authority, the EPA, the Ministry of Business Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Health, the Ministry for Primary Industries, Waka Kotahi New Zealand Transport Agency and New Zealand Customs Service have been consulted on the proposals outlined in this paper. The Treasury and Department of Prime Minister and Cabinet have been informed.

Communications

- 44 The Ministry for the Environment will work with relevant agencies to communicate regulatory changes to stakeholders and the general public.

Proactive Release

- 45 I intend to proactively release this document within 30 days. Documents will be redacted as appropriate under the Official Information Act 1982.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that in 2013 Cabinet authorised New Zealand to sign and ratify the Minamata Convention on Mercury, and Parliamentary Treaty Examination concluded in 2014;
- 2 **note** that before New Zealand can ratify the Convention, the domestic regulations necessary to meet obligations under the Convention need to be gazetted and that public consultation on these measures occurred in 2020;
- 3 **agree** to amend the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 under the Imports and Exports (Restrictions) Act 1998 to require permits for the import and export of mercury, based on criteria listed in paragraph 24 of this paper;
- 4 **agree** to amend the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 under the Imports and Exports (Restrictions) Act 1998 to require permits based on criteria in paragraph 24 for the import and export of switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays, and measuring devices, where no feasible mercury-free alternative for replacement is available;
- 5 **agree** to amend the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 to prohibit the import and export of, and create regulations under the Waste Minimisation Act 2008 to prohibit manufacture and sale of, the mercury-added products in Annex A Part 1 of the Minamata Convention on Mercury with a lower mercury threshold than the Convention for compact fluorescent light bulbs (paragraph 17);

I N C O N F I D E N C E

- 6 **agree** to amend the Resource Management (National Environmental Standards on Air Quality) Regulations 2004 to prohibit the use of mercury in facilities used in the manufacturing processes listed in Annex B of the Minamata Convention on Mercury;
- 7 **agree** to amend Resource Management (National Environmental Standards for Air Quality) Regulations 2004 to incorporate best available techniques and best environmental practice (BAT/BEP) guidance (agreed by Parties to the Convention on 2017, and on the Minamata Convention on Mercury website), as a mandatory consideration for councils when making planning or consenting decisions about the discharges of mercury from new or substantially modified point sources listed in Annex D of the Minamata Convention on Mercury. So that those activities that meet BAT/BEP guidelines are permitted and those that do not are prohibited;
- 8 **agree** that for this purpose substantially modified means a modification that results in an increase in mercury emissions to air of five per cent or more;
- 9 **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to draft:
- 9.1 regulations under section 23(1)(b) of the Waste Minimisation Act 2008;
- 9.2 amendments to the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004; and
- 9.3 an amendment to the Resource Management (National Standards for Air Quality) Regulations 2004;
- 10 **note** that the relevant regulatory requirements under the Waste Minimisation Act 2008 for making regulations to control or prohibit an item have been met;
- 11 **note** that the relevant regulatory requirements under the Imports and Exports (Restrictions) Act 1988 for making regulations are met;
- 12 **note** that New Zealand's international trade obligations will continue to be met in relation to the adoption and implementation of these measures;
- 13 **note** that the Minister for the Environment has considered a report on submissions to the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 with recommendations prepared by the Ministry for the Environment in accordance with section 46A(4)(c) of the Resource Management Act 1991;
- 14 **agree** that the Minister for the Environment can make further decisions on minor and technical matters including final exemptions, in line with the policy decisions agreed by Cabinet;
- 15 **invite** the Minister for the Environment to return to Cabinet following drafting of amendments and regulations.

Authorised for lodgement

Hon David Parker
Minister for the Environment