



**THE TOXIC SUBSTANCES REGULATIONS 1983, AMENDMENT
NO. 3**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 17th day of October 1988

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 82 of the Toxic Substances Act 1979, and, in the case of regulations 6 to 12 of the regulations and the Schedules to the regulations, to section 7 of that Act, His Excellency the Governor-General, acting on the advice of the Minister of Health tendered on the recommendation of the Toxic Substances Board, and by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

- 1. Title and commencement
- 2. Containers
- 3. New Part (relating to polychlorinated biphenyls) inserted in principal regulations

PART VIIA

SPECIAL PROVISIONS RELATING TO
POLYCHLORINATED BIPHENYLS

- 49C. Interpretation
- 49D. Owner of PCB to notify Medical Officer of Health
- 49E. Notification of change of ownership of PCB

- 49F. Storage of PCB
- 49G. Disposal of PCB
- 49H. Prohibition of importation of PCB
- 49I. Prohibition on storage and use of PCB

- 4. Offences
- 5. Special defence
- 6. New deadly poisons
- 7. New dangerous poisons
- 8. Further amendments to Second Schedule
- 9. New standard poisons
- 10. Further amendments to Third Schedule

“(a) The name and address of the person transferring ownership of the PCB:

“(b) The address or addresses where that person kept the PCB ownership of which was transferred:

“(c) A reasonably accurate estimate of the quantity of PCB ownership of which was transferred:

“(d) A reasonably accurate estimate of the quantity of PCB in New Zealand still owned by that person (if any), the address or addresses where it is kept, and, where it is kept at more than 1 address, a reasonably accurate estimate of the quantity of PCB kept at each address:

“(e) The name and address of the person to whom ownership of the PCB was transferred.

“(2) Every person to whom ownership of any PCB is transferred shall, not later than the 28th day after taking delivery of that PCB, give notification in writing to the Medical Officer of Health of the following information:

“(a) The name and address of that person:

“(b) A reasonably accurate estimate of the quantity of PCB of which that person took delivery:

“(c) A reasonably accurate estimate of the quantity of PCB in New Zealand owned by that person, the address or addresses where it is kept, and, where it is kept at more than 1 address, a reasonably accurate estimate of the quantity of PCB kept at each address:

“(d) The name and address of the previous owner of the PCB of which that person took delivery.

“49F. **Storage of PCB**—Every person who stores any PCB shall take all reasonable steps to ensure that it is stored in a manner that minimises the risk of injury to, or any adverse effect on, the environment, or the health or safety of persons or property, from that PCB.

“49G. **Disposal of PCB**—Every person who disposes of any PCB shall take all reasonable steps to ensure that it is disposed of in such a manner that it will not be injurious to, or will not adversely affect, the environment or the health or safety of persons or property.

“49H. **Prohibition of importation of PCB**—(1) Subject to subclause (2) of this regulation, no person shall import into New Zealand any PCB.

“(2) The Director may, by notice in writing, exempt any person from the prohibition imposed by subclause (1) of this regulation, either generally or subject to such conditions as the Director may specify in the notice.

“49I. **Prohibition on storage and use of PCB**—(1) Subject to subclause (2) of this regulation, no person shall store or use any PCB.

“(2) The Director may, by notice in writing, exempt any person from the prohibition imposed by subclause (1) of this regulation, either generally or subject to such conditions as the Director may specify in the notice.”

(2) Regulation 49A of the principal regulations (as inserted by regulation 15 of the Toxic Substances Regulations 1983, Amendment No. 1) is hereby consequentially revoked.

4. Offences—Regulation 54 of the principal regulations is hereby amended by revoking subclause (1) (as amended by regulation 16 of the Toxic Substances Regulations 1983, Amendment No. 1 and by regulation 4

of the Toxic Substances Regulations 1983, Amendment No. 2), and substituting the following subclause:

“(1) Every person commits an offence against these regulations who contravenes or fails to comply with any of the provisions of regulations 15, 16, 17 (1), 17A, 32A, 33, 34, 35A, 38 (1), 39, 40, 41 (1), 46B (2), 46C (1), 46C (3), 46C (5), 47, 48, 48A, 49B, 49D, 49E, 49F, 49G, 49H, 49I, and 50 of these regulations.”

5. Special defence—The principal regulations are hereby amended by inserting, after regulation 54, the following regulation:

“54A. Notwithstanding anything in regulation 54 of these regulations, no person shall be convicted of an offence against these regulations arising out of a contravention of, or failure to comply with, regulation 49F or regulation 49G of these regulations, whether that contravention or failure is attributable to that person or to some other person, if that person proves that, in relation to the subject-matter of the offence alleged, that person or that other person, as the case may require, complied with the relevant advice or recommendation, if any, contained in the most recent edition, for the time being, of the code of good practice entitled ‘Safe Management of PCBs’, published by the Department of Health.”

6. New deadly poisons—(1) The substances named in the First Schedule to these regulations are hereby declared to be deadly poisons.

(2) The First Schedule to the principal regulations is hereby amended by inserting, in their appropriate alphabetical order, the names of the substances declared to be deadly poisons by subclause (1) of this regulation.

7. New dangerous poisons—(1) The substances named in the Second Schedule to these regulations are hereby declared to be dangerous poisons.

(2) The Second Schedule to the principal regulations is hereby amended by inserting, in their appropriate alphabetical order, the names of the substances declared to be dangerous poisons by subclause (1) of this regulation.

8. Further amendments to Second Schedule—(1) The Second Schedule to the principal regulations is hereby amended by omitting the item that begins with the word “Chlorfenvinphos”, and substituting the following item:

“CHLORFENVINPHOS, in liquid preparations containing less than 50 percent but not less than 5 percent of chlorfenvinphos.”

(2) The Second Schedule to the principal regulations is hereby further amended by omitting the item that begins with the word “Cypermethrin”, and substituting the following item:

“CYPERMETHRIN (including all isomers, and all isomeric mixtures, of cypermethrin), in liquid preparations containing 40 percent or more of cypermethrin.”

(3) The Second Schedule to the principal regulations is hereby further amended by omitting the item that begins with the word “Fenvalerate”, and substituting the following item:

“FENVALERATE (including all isomers, and all isomeric mixtures, of fenvalerate), in liquid preparations containing 50 percent or more of fenvalerate.”

9. New standard poisons—(1) The substances named in the Third Schedule to these regulations are hereby declared to be standard poisons.

(2) The Third Schedule to the principal regulations is hereby amended by inserting, in their appropriate alphabetical order, the names of the substances declared to be standard poisons by subclause (1) of this regulation.

10. Further amendments to Third Schedule—(1) The Third Schedule to the principal regulations is hereby amended by omitting the item that begins with the word “Chlorfenvinphos”, and substituting the following item:

“CHLORFENVINPHOS, in liquid preparations containing less than 5 percent but not less than 0.5 percent of chlorfenvinphos.”

(2) The Third Schedule to the principal regulations is hereby further amended by omitting the item that begins with the word “Cypermethrin”, and substituting the following item:

“CYPERMETHRIN (including all isomers, and all isomeric mixtures, of cypermethrin), in liquid preparations containing less than 40 percent but not less than 4 percent of cypermethrin; and in solid preparations containing 15 percent or more of cypermethrin.”

(3) The Third Schedule to the principal regulations is hereby further amended by omitting the item that begins with the word “Fenvalerate”, and substituting the following item:

“FENVALERATE (including all isomers, and all isomeric mixtures, of fenvalerate), in liquid preparations containing less than 50 percent but not less than 5 percent of fenvalerate; and in solid preparations containing 20 percent or more of fenvalerate.”

11. New harmful substances—(1) The substances named in the Fourth Schedule to these regulations are hereby declared to be harmful substances.

(2) The Fourth Schedule to the principal regulations is hereby amended by inserting, in their appropriate alphabetical order, the names of the substances declared to be harmful substances by subclause (1) of this regulation.

12. Further amendments to Fourth Schedule—(1) The Fourth Schedule to the principal regulations is hereby amended by omitting the item that begins with the word “Cypermethrin”, and substituting the following item:

“CYPERMETHRIN (including all isomers, and all isomeric mixtures, of cypermethrin), in liquid preparations containing less than 4 percent of cypermethrin; and in solid preparations containing less than 15 percent but not less than 4 percent of cypermethrin.”

(2) The Fourth Schedule to the principal regulations is hereby further amended by omitting the item that begins with the word “Fenvalerate”, and substituting the following item:

“FENVALERATE (including all isomers, and all isomeric mixtures, of fenvalerate), in liquid preparations containing less than 5 percent but not less than 3 percent of fenvalerate; and in solid preparations containing less than 20 percent but not less than 5 percent of fenvalerate.”

13. Revocations—The following regulations are hereby consequentially revoked:

- (a) Regulation 16 of the Toxic Substances Regulations 1983, Amendment No. 1;
- (b) Regulation 4 of the Toxic Substances Regulations 1983, Amendment No. 2.

SCHEDULES

FIRST SCHEDULE

Reg. 6

NEW DEADLY POISONS

FLOCOUMAFEN, in liquid preparations containing 4 percent or more of flocoumafen; and in solid preparations containing 15 percent or more of flocoumafen.

PHOSPHAMIDON, in liquid preparations containing 80 percent or more of phosphamidon.

SECOND SCHEDULE

Reg. 7

NEW DANGEROUS POISONS

FLOCOUMAFEN, in liquid preparations containing less than 4 percent but not less than 0.1 percent of flocoumafen; and in solid preparations containing less than 15 percent but not less than 2 percent of flocoumafen.

FLUTRIAFOL, in liquid preparations containing 90 percent or more of flutriafol.

FLUVALINATE, in liquid preparations containing 80 percent or more of fluvalinate.

FURATHIOCARB, in liquid preparations containing 20 percent or more of furathiocarb; and in solid preparations containing 80 percent or more of furathiocarb.

HYDROGEN CYANAMIDE, in liquid preparations containing 50 percent or more of hydrogen cyanamide.

PHOSPHAMIDON, in liquid preparations containing less than 80 percent but not less than 8 percent of phosphamidon; and in solid preparations containing 40 percent or more of phosphamidon.

THIRD SCHEDULE

Reg. 9

NEW STANDARD POISONS

AROMATIC HYDROCARBONS (being a mixture of toluene and xylene), except in preparations in which the proportion of aromatic hydrocarbons is in the aggregate less than 5 percent.

FLOCOUMAFEN, in liquid preparations containing less than 0.1 percent of flocoumafen; and in solid preparations containing less than 2 percent of flocoumafen.

FLUTRIAFOL, in liquid preparations containing less than 90 percent but not less than 10 percent of flutriafol; and in solid preparations containing 37 percent or more of flutriafol.

THIRD SCHEDULE—*continued*

- FLUVALINATE, in liquid preparations containing less than 80 percent but not less than 8 percent of fluvalinate; and in solid preparations containing 30 percent or more of fluvalinate.
- FURATHIOCARB, in liquid preparations containing less than 20 percent but not less than 2 percent of furathiocarb; and in solid preparations containing less than 80 percent but not less than 10 percent of furathiocarb.
- GLUFOSINATE AMMONIUM, in liquid preparations containing 15 percent or more of glufosinate ammonium; and in solid preparations containing 60 percent or more of glufosinate ammonium.
- HALOXYFOP, in liquid preparations containing 20 percent or more of haloxyfop; and in solid preparations containing 80 percent or more of haloxyfop.
- HYDROGEN CYANAMIDE, in liquid preparations containing less than 50 percent but not less than 5 percent of hydrogen cyanamide; and in solid preparations containing 20 percent or more of hydrogen cyanamide.
- PHOSPHAMIDON, in liquid preparations containing less than 8 percent but not less than 1 percent of phosphamidon; and in solid preparations containing less than 40 percent but not less than 4 percent of phosphamidon.
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Reg. 11

FOURTH SCHEDULE

NEW HARMFUL SUBSTANCES

- ALIPHATIC KETONES (being a mixture of acetone, methyl ethyl ketone, and methyl iso-butyl ketone, or of any 2 of those substances), except in preparations in which the proportion of aliphatic ketones is in the aggregate less than 5 percent.
- AZAMETHIPHOS.
- CAPTAN.
- CHLORFENVINPHOS, in liquid preparations containing less than 0.5 percent of chlorfenvinphos.
- FLUAZINAM.
- FLUTRIAFOL, in liquid preparations containing less than 10 percent but not less than 2 percent of flutriafol; and in solid preparations containing less than 37 percent but not less than 2 percent of flutriafol.
- FLUVALINATE, in liquid preparations containing less than 8 percent but not less than 1 percent of fluvalinate; and in solid preparations containing less than 30 percent but not less than 1 percent of fluvalinate.
- FURATHIOCARB, in liquid preparations containing less than 2 percent of furathiocarb; and in solid preparations containing less than 10 percent of furathiocarb.
- GLUFOSINATE AMMONIUM, in liquid preparations containing less than 15 percent but not less than 3 percent of glufosinate ammonium; and in solid preparations containing less than 60 percent but not less than 3 percent of glufosinate ammonium.

FOURTH SCHEDULE—*continued*

HALOXYFOP, in liquid preparations containing less than 20 percent of haloxyfop; and in solid preparations containing less than 80 percent of haloxyfop.

HYDROGEN CYANAMIDE, in liquid preparations containing less than 5 percent but not less than 1 percent of hydrogen cyanamide; and in solid preparations containing less than 20 percent but not less than 1 percent of hydrogen cyanamide.

METASILICATE SALTS OF SODIUM OR POTASSIUM, except—

(a) In liquid preparations with a pH of 11 or less:

(b) In solid preparations that, when dissolved in water at a rate of 10 grams per litre, have a pH of 11 or less.

PHOSPHAMIDON, in liquid preparations containing less than 1 percent but not less than 0.1 percent of phosphamidon; and in solid preparations containing less than 4 percent but not less than 0.1 percent of phosphamidon.

C. J. HILL,

Acting for Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which are made on the recommendation of the Toxic Substances Board, amend the Toxic Substances Regulations 1983.

Regulation 1 relates to the Title and commencement of the regulations. The regulations, except regulations 3 and 4, are to come into force on 1 December 1988. Regulations 3 and 4, so far as they relate to the new *regulation 49i*, are to come into force on 1 January 1994, but are otherwise to come into force on 1 December 1988.

Regulation 2 amends regulation 36 of the principal regulations. The effect of the amendment is that containers in which toxic substances are imported to New Zealand, or are transported in a vehicle, must comply with both section 26 of the Toxic Substances Act 1979 (and the other requirements set out in regulation 36 (a)) and the Transport Recommendations (New Zealand Standard 5433: (Code of practice for the transport of hazardous substances on land)).

Regulation 3 inserts a new *Part VIIA* in the principal regulations. The new Part imposes controls on polychlorinated biphenols (PCB), which is a toxic environmental contaminant. The purpose of the controls is to ensure that all PCBs are withdrawn from service and disposed of by 1 January 1994. As from that date it will be an offence to store or use any PCB unless specially exempted. In the meantime restrictions are imposed on their storage and disposal to ensure that they do not pose a risk to the environment or the health or safety of the public.

The new *regulation 49D* requires existing owners of any PCB that is in New Zealand to give certain details relating to that PCB to the Medical Officer of Health by 1 June 1989.

The new *regulation 49E* requires certain details to be forwarded to the Medical Officer of Health whenever there is a change of ownership of any PCB.

The new *regulation 49F* requires every person who stores any PCB to take all reasonable steps to ensure that it is stored in a manner that minimises the risk of injury to, or any adverse effect on, the environment, or the health or safety of persons or property, from that PCB.

The new *regulation 49c* requires every person who disposes of any PCB to take all reasonable steps to ensure that it is disposed of in such a manner that it will not be injurious to, or will not adversely affect, the environment or the health or safety of persons or property.

The new *regulation 49H* prohibits the importation into New Zealand of any PCB. The Director may grant an exemption from the prohibition. The new regulation replaces regulation 49A of the principal regulations, which currently prohibits the importation of any PCB into New Zealand.

The new *regulation 49i*, which does not come into force until 1 January 1994, prohibits the storage or use of any PCB. The Director may grant an exemption from the prohibition.

Regulation 4 amends regulation 54 of the principal regulations, which creates certain offences. The amendment extends the offence provision to cover breaches of the requirements imposed by the new *Part VIIA*.

Regulation 5 inserts into the principal regulations a new *regulation 54A*, which provides a special defence in relation to prosecutions for offences arising out of a contravention of, or a failure to comply with, the new *regulation 49F* or the new *regulation 49c*. It will be a defence if the defendant proves compliance with the relevant advice or recommendation contained in the code of good practice relating to PCBs, which is published by the Department of Health.

Regulations 6 to 12 make changes to the Schedules to the principal regulations relating to the classification of toxic substances as deadly poisons, dangerous poisons, standard poisons, and harmful substances.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 20 October 1988.

These regulations are administered in the Department of Health.