



environmentaldefender's office newsouth wales

Submission on the National Chemicals Environmental Management (NChEM) Scheme

6th October 2006

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- ◆ *the importance of indigenous involvement in protection of the environment.*

ABN 72 002 880 864

Contact Us

Environmental Defender's Office Ltd

Level 9, 89 York St
SYDNEY NSW 2000

freecall 1800 626 239

tel (02) 9262 6989

fax (02) 9262 6998

email: edonsw@edo.org.au

website: www.edo.org.au

For inquiries on this matter contact louisa.rochford@edo.org.au

Ms Monica Gilbey
Project Officer
EPHC Chemicals Working Group
c/- NEPC Service Corporation
Level 5, 81 Flinders Street
Adelaide SA 5000

Dear Ms Gilbey,

National Chemicals Environmental Management (NChEM)

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide scientific and policy comment on the National Chemicals Environmental Management (NChEM).

The EDO supports a national approach to more comprehensively address potential environmental risks associated with chemicals. The potential impact of substances produced by the chemical industry is a matter of major international concern.¹ The EDO supports the NChEM, which aims to reduce the fragmentation of environmental chemicals regulation across Australia and better integrate national chemical assessments with State and Territory management approaches.²

The EDO supports the introduction of policies to encourage the development of a sustainable chemicals industry in Australia. A variety of instruments, including economic incentives, voluntary approaches, interim management measures and regulations will need to be utilised to achieve this.

Our comments relate to the four key areas of NChEM: **(i)** strengthening environmental risk assessment, **(ii)** streamlining environmental controls, **(iii)** informing decisions, and **(iv)** prioritising actions. Specifically, we note that comprehensive changes would be required to ensure that a sustainable chemicals industry, which is international best practice, is established in Australia.

(i) Strengthening Environmental Risk Assessment

Strengthening environmental risk assessment is fundamental to establishing an Australia-wide sustainable chemicals industry. The EDO supports strengthening of assessment methodologies and best practice Environmental Risk Assessment manuals, increased consultation between regulators and agencies in different jurisdictions, and strengthened environmental assessment of Agvet chemicals.

Our comments relate to: **(a)** assessment of existing chemicals, **(b)** lifecycle assessment, and **(c)** substitution of harmful chemicals with less harmful alternatives.

a. Assessment of existing chemicals

One of the major problems identified by the OECD is the lack of knowledge about the properties, effects and exposure patterns of the great majority of chemicals and

¹ Organisation for Economic Co-operation and Development (2001) *OECD Environmental Outlook*.

² Environment Protection and Heritage Council (July 2006) *NChEM: A National Framework for Chemicals Management in Australia – Discussion Paper*.

consumer products on the market.³ Of the 40,000 industrial chemicals available for use in Australia, around 38,000 have never been the subject of modern risk assessment. This is because these chemicals were introduced prior to the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) being established in 1990.⁴

The EPHC recognise that Australia does not have a systematic approach for assessing these 'existing' chemicals. The EDO considers that chemicals which have not been evaluated should be considered potentially hazardous, and steps should be taken to gather all available data and evaluate these chemicals as soon as possible. It is unclear as to whether the NChEM proposal will contribute to this.

The EDO supports the implementation of measures to expand the role and responsibility of industry in generating the necessary data on all chemicals on the market and the preparing assessment reports to be provided to the government. Guidance on the data requirements and assessment methodologies could be provided in parallel with audits and accreditation of laboratories, to ensure companies are providing accurate data. The chemicals industry should also be required to provide information on the uses of its products to help set priorities for assessment. The chemical-by-chemical approach currently used for the assessment of chemicals could be replaced by a framework that considers groups of chemicals related by their structure or use.⁵

The European Union (EU) is leading the way in introducing chemicals policy reforms and sustainable chemistry. The Registration, Evaluation and Authorisation of Chemicals (REACH) initiative, which will take effect in 2007, will require chemicals producers to supply health and environmental information for 30,000 chemicals which are already on the market, undertake more extensive evaluation for 5,000 high volume chemicals and seek authorisation for the use of 1,400 chemicals of high concern.⁶

b. Life cycle assessment of chemicals

Risk assessment in Australia considers the life-cycle of chemicals in terms of the potential exposure pathways from manufacture to use to disposal.⁷ In order for chemicals management in Australia to be sustainable, increased producer responsibility for the life-cycle of chemicals and the products containing these chemicals is necessary. This will encourage the development of chemicals and products which are safer and easier to recover and recycle. The use of public information policies on the life-cycle management of chemicals will further ensure that chemicals and products are developed, used and disposed of safely.

The EU REACH initiative will require producers to recover and reuse electronics waste, encouraging the use of new materials which are easier to recover and recycle; and the use of toxic materials in new electronics products sold in the EU will be prohibited.⁸

³ Organisation for Economic Co-operation and Development (2001) *op cit.*

⁴ Environment Protection and Heritage Council (July 2006) *op cit.*

⁵ Organisation for Economic Co-operation and Development (2001) *op cit.*

⁶ The European Commission proposed a new EU regulatory framework for the Registration, Evaluation and Authorisation of Chemicals (REACH) on 29 October 2003 (COM(03) 644 (01)); and reached a Common Position, June 27 2006. See: http://ec.europa.eu/enterprise/reach/eia_en.htm.

⁷ National Industrial Chemicals Notification and Assessment Scheme (2004) *NICNAS Handbook for Notifiers*.

⁸ California Policy Research Center (2006) *Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation*.

c. Substitution of harmful chemicals with less harmful alternatives

The OECD has recognised that governments, together with industry, need to introduce a range of approaches to effectively evaluate and manage the risks that chemicals pose to human health and the environment. The OECD recommends that governments develop policies to prevent rather than control pollution and promote reduction and recycling. For industry it is recommended that process controls and “sustainable chemistry” approaches are used. Sustainable chemistry involves the production and use of more environmentally benign chemical products and the development of products that are durable and can be reused or recycled. The OECD recommends that governments introduce policies to foster research and assist companies in the development and marketing of these new sustainable chemicals and products.⁹

The EDO supports the implementation of policies to encourage investment in sustainable chemistry research and promote the import and production of environmental friendly substances and products that could be substituted for some of the older, more harmful chemicals.

Currently, chemicals and chemical products are differentiated in the market only on the basis of function, price and performance. There is little immediate, compelling market advantage to invest time and money in implementing policies of sustainable chemistry.¹⁰

To address this and promote the substitution of harmful chemicals with less harmful alternatives (or preferably, alternatives showing no identified hazard), technical criteria or labelling strategies to allow sustainable chemistry leaders to differentiate their products in the market should be introduced. The phased restriction of hazardous chemicals would also be effective in promoting research into the development of environmentally friendly chemical substitutes. Economic incentives, including tax deductions for research and development of sustainable chemistry products, or reduced fees for the import of green chemicals, as well as economic disincentives for hazardous chemicals, should also be utilised.

In the United States, public health and environmental groups have launched initiatives to encourage businesses to use safer chemicals. Health Care Without Harm (HCWH) has identified hazardous products in use in the health care industry and worked to replace them with products that are both efficacious and safer. The Louisville Charter, a set of guiding principles for chemicals reform in the US, was drafted in 2005 and has been endorsed by over 60 organisations. The principles of the Charter include the use of safer chemical substitutes and the phasing out of toxic, persistent and bioaccumulative chemicals. In addition to these initiatives, the Californian government has recently commissioned research on the introduction of a modern, comprehensive chemicals policy in California. The research concluded that a number of changes to the policy framework were required, including a new chemicals reporting system, expanded regulatory authority and market incentives for green chemistry research and development.¹¹

⁹ Organisation for Economic Co-operation and Development (2001) *op cit.*

¹⁰ Greenpeace International (May 1999) *The Way Forward, Out of the Chemicals Crisis.*

¹¹ California Policy Research Center (2006) *op cit.*

(ii) Streamlining Environmental Controls

The EDO supports nationally consistent regulatory requirements for chemicals of high environmental concern.

However, the ‘streamlining’ process aimed at ‘reducing red tape’ must not result in a lowest common denominator approach to chemical control. Where chemicals with potentially significant environmental health impacts are involved, a certain level of ‘regulatory burden’ may be an appropriate and necessary safeguard. The nationally consistent standards and controls should be consistent with international best practice.

It is unclear whether this element of NChEM will require uniform legislation or amendment to existing state and territory legislation in response to a COAG agreement. It is not clear what the time frame for commencing new regulatory controls will be.

We support enhancing the role of NICNAS to regulate the importation, manufacture, supply and use of chemicals. In particular we support NICNAS power to phase out, suspend, restrict or prohibit the use of high risk chemicals. This power should be broadly drafted.

The EDO submits that comprehensive consultation and review be undertaken in each jurisdiction to ensure that adoption and enforcement of NICNAS controls by state and territories does not undermine or weaken any effective controls already in place. As noted in the Discussion Paper not all states have dedicated environmental chemicals legislation, but states such as NSW do.¹²

(iii) Informing Decisions

The EDO supports a process for states and territories to provide information to national chemical regulators on the effectiveness of controls used to manage chemicals of high concern. We submit that this information should also be made public.

We support a system for channelling public, industry users and agencies to provide feedback. The Discussion paper indicates that the information providers may be confident that the information will be considered as part of the chemical management. It is unclear whether this is a policy position or whether there will be legislative amendments explicitly stating that such feedback must be taken into account. This should be clarified.

We strongly support post-assessment information being required on high risk chemicals.

(iv) Prioritising Actions

Relatively small releases of some chemicals can pose significant human health and environmental threats. Chemicals of particular concern are those that are toxic, that are not readily destroyed and remain in the environment for long periods of time

¹² *Environmentally Hazardous Chemicals Act 1985*, and *Protection of the Environment Operations Act 1997*.

(persistent), and that build up in body tissue (bioaccumulative) (for example: mercury, organochlorine pesticides and PAHs).¹³

The EDO has recently assisted NICNAS in compiling a risk assessment report on the potential effects of lead, and we acknowledge the process can be time and resource intensive. However, it is essential that resources are provided to assess existing chemicals (as envisaged under the EU REACH scheme), rather than focussing solely on new chemicals. It is essential that the backlog of unassessed chemicals is addressed.

We understand that priority setting will be an issue for consideration of the proposed stakeholder consultation forum. We see clarification on the composition of the stakeholder consultation forum, in terms of representation from each state, industry, community and environment group. Prioritising of chemicals must be based on science, and not industry preference.

In summary, we support the intent of NChEM to improve the way that environmental impacts of chemicals are managed in Australia. However, in the absence of specific regulatory amendment detail, it is difficult to comment on how the proposed best practice 'principles' for chemicals management and the various 'guidance' documents will translate to legally enforceable controls at the state level.

We are happy to be involved in any ongoing stakeholder consultation.

For further information, please contact louisa.rochford@edo.org.au or on 02 9262 6989.

Yours sincerely,
Environmental Defenders Office

Tom Holden
Scientific Director

Rachel Walmsley
Policy Director

¹³ United States Environment Protection Authority Office of Environmental Information (February 2001) *The Emergency Planning and Community Right to Know Act, Section 313 Release and Other Waste Management Reporting Requirements.*