

Local Government Regulatory Performance – Issues paper 2012

Comments by Gordon George
106 Mohaka Street
Wainuiomata 5014

This submission is from Gordon George and should be considered to be a private submission rather than one on behalf of my employer (Hutt City Council, where I manage an enforcement section utilising the LGA (Trade Wastes and stormwater issues) the RMA (pollution response role and delegated authority from the Regional Council) and HSNO issues/incidents. I am a past chairperson of Water NZ's trade waste Special Interest Group and immediate past president of the Trade and Industrial Waste Forum. Many of your questions have been answered with a bias towards the wastewater industry and my knowledge of it. As a private submitter I feel more able to comment frankly without the need for tact that may detract from the value of the submission.

General Comments

LGA derived TW bylaws – administer discharges into TLA assets – need local control to allow appropriate resourcing and to suit local needs – central control at the risk of central resourcing cuts could expose local assets to financial and infrastructural risks. i.e TLA would be exposed to risks it had no ability to control unless Central govt was willing to take on the liability for damage to TLA assets or losses incurred – sewers and WWTP's.

HSNO issues – not well catered for – too many enforcement agencies (DOL, EPA, RC's, TLA's, NZTA, Police, CAA, Public Health, MNZ etc). RMA – HSNO linkage needs improvement – eg HSNO regs can effectively allow creation of breaches of RMA through inappropriate thresholds – e.g. whilst a 4900L diesel tank creates no HSNO issues, it can be a significant environmental risk in breach of s17 of the RMA. Test certifiers are not always linking certificates to limitations to activities in District Plan's resulting in conflict, non-compliance and additional costs.

Still awaiting drafting of infringement regulations in LGA2002 – been waiting for DIA to draft them since 2003. Essentially it is not high up on their workplan and I got told by DIA that unless enough CEO's said it was a problem then nothing would change – leaves us with either ignoring enforcement, finding alternative sanctions or full blown and costly prosecution.

Whilst building application activities could be regionalised there is a need for multiple TLA inputs e.g. Health, Trade Wastes and Planning. The Litter Act sits well with TLA's usually being a part time duty of an officer.

General principles I believe should be considered in determining where regulation should sit administratively:

Where the regulation has direct relevance to a Council activity or protection of its assets or could create liabilities for that authority then the authority should have some degree of control. It would not be appropriate for an authority to have responsibility and liability but no control.

Where an authority has responsibility/liability for a regulatory activity then it should have some degree of control over cost recovery mechanisms or alternatively the ability to "opt out" and default to the umbrella agency in control if it does not set fees adequate for the task intended.

Addressing your documents questions:

Q1: What is the relative importance of the range of the regulatory activities local government undertakes? Where should the Commission's focus be?

Significant importance to TLA activities, major interactions with residents, developers and businesses. Activities where there is little scope for community involvement or TLA assets are not involved may be best catered for through more centralised (or regionalised) structures:

E.g. Building compliance – scope for regionalised focus given legislation is national not local and limited ability for localised flavouring but considerable scope for localised variation in enforcing standards

Q2 What are the main economic, social, demographic, technological and environmental trends that are likely to affect local government regulatory functions in the future?

A wish for more cost effective regulatory systems and the increasing use of smarter data management and acquisition systems. E.g. with mostly electronic processing of building and other consents the "back room processing has more scope for regionalisation.

Q4 Are there other statutes that confer significant regulatory responsibilities on local government? What, if any, regulatory roles of local government are missing from Table 2?

Fencing of swimming pools Act 1987 – maybe not significant unless there has been a fatality highlighting lack of enforcement

Q6 Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government?

Size of the authority will also have an impact with smaller authorities having less ability to specialise in enforcement work.

Q8 To what extent are local preferences a source of regulatory variation in New Zealand? How far should councils, when implementing a national standard, have discretion to reflect local preferences in their bylaws?

Councils should have some discretion where local assets are protected by locally tailored bylaws – e.g. Trade wastes bylaws to manage inputs into local WWTP's. It is possible to have quite varying but consented inputs into different plants as their treatment capabilities will vary and only the output actually matters.

Councils should also have some discretion to adopt approaches to protect its community where the standard is inadequate and forms a baseline for behaviour that produces unintended or undesirable consequences and uncertainty – e.g. the recent NES for contaminated land – only deals with Human health and ignores environmental health – e.g. we now have a national standard that considers land with Copper content high enough to prevent grass germinating as ok for high density residential usage. Whether its a human health risk or not the matter of accepting land that cannot sustain life is at odds with the intent of the RMA

Q9 Are there areas of regulation where local and central government regulation appear to be in conflict? If so, how far should such conflicts be accepted as a consequence of the diversity of preferences?

The NES for contaminated land and the RMA (as above), HSNO generated controls and RMA appropriate controls – can meet HSNO but still represent a serious risk to the environment in breach of s17 RMA – its not the RMA that needs to change its the emergency controls thresholds in HSNO.

Q13 Are there other significant sources of variation in local authority regulatory practice than those described in this chapter?

Yes – interference by politicians or senior Council staff attempting to persuade against enforcement actions on behalf of significant businesses or influential people.

Q14 Can you provide examples of inconsistencies in the administration and enforcement of regulations between local authorities?

Most Councils have and actively enforce Trade Wastes Bylaws (LGA2002) but some don't yet all are required to have them. TW bylaws are also meant to encourage waste minimisation yet Auckland have put in place (well are trying to though reportedly facing a legal challenge) a charging regime that will actively/financially encourage the opposite and arguably presents a risk to its sewer integrity especially when reduced monitoring is intended to occur at the same time.

Q15 Do these inconsistencies impose extra costs on businesses? If so, are these extra costs significant?

Is it that some businesses face extra costs or is it that those who don't (through the omissions of their Council) get an unfair advantage at the expense of the community who will pick up the bill, e.g. through failure to impose adequate wastewater pre-treatment requirements on dischargers the Council then needs to pay for remedial action and/or increased treatment plant running costs.

It is also not limited to cost implications for businesses as TLA's can also be impacted. An extreme example is the variation in Regional Council issued discharge consents for waste water treatment plants (WWTP) leading to industrial movement based on discharge cost advantage. E.g. Napier and Hastings discharge into the same sea catchment yet they were initially offered two very different consents with Napier facing significantly greater WWTP costs to meet the required standard. Hastings now has the majority of the big dirty wet industries.

Dunedin has recently significantly altered its charging policies to encourage industry with no likelihood of the costs brought about by industry being met by industry – social policy objectives met at the expense of LGA obligations and a nowhere near a level playing field as industries tell us they want. Or Fonterra's permissive Manawatu river discharge consent completely at odds with PNCC's WWTP's consent while the community then develops an accord for cleaning up the polluted river??

Q16 To what extent does variation in regulatory practice matter?

Sometimes it doesn't – e.g. standards applied to industrial pre-treatment plants (trade wastes discharges) can vary provided they are managed to avoid impacts upon the WWTP and consequent impacts upon its ultimate discharge. E.g. Most councils now use the model trade wastes bylaw (NZS9201 pt 23) as the basis of their bylaw but can create varied consent quality parameters to suit dischargers provided their plant and network can cope – that the Council actively and wisely manages is the main issue not that the limits or controls applied may vary.

However where that variation in practice shifts a liability onto another party or can be considered negligent with respect to prudently managing infrastructure or the environment then the ability to vary needs to be limited. The risk is to create an unfair competitive advantage for some and impose additional costs on industry and communities for others.

Q17 Can you provide examples of regulatory innovation by local government?

The model bylaw process – which aids consistency and reduces costs. Regional and national discussion groups with attempts to create consistency of approach including sharing enforcement or regulatory approaches that work efficiently.

Making full use of low cost enforcement options – e.g. cancellation of consents to focus discharger attention. Cost incentives for compliance improvements through reduced consent fees, reduced monitoring costs and reduced user charges costs (loading based cost recovery from industry). Also some authorities share information on legal representatives- e.g. Crown Law Office which specialise in prosecutions and are considerably cheaper than the more usual private practices.

Q18 Is the innovation specific to a particular local authority and its unique circumstances, or could it be adopted more widely?

Applicable to all

Q19 What mechanisms or incentives are there for local authorities to share innovations (or experiences with 'failed' innovations) with others?

Professional networking events, training events, workshops, conferences, regional interest groups

Q20 What factors encourage (or deter) local authority innovation? (eg, the (in)ability to capture the cost savings from innovation)

Inflexible authoritarian management regimes discourage innovation, training can encourage innovation – see how others approach issues, specialist staff able to undertake much of the enforcement process – saves on legal expert time. The current trend is to chop training budgets which is short sighted and counter productive.

Q25 In the New Zealand context, are there regulatory functions that need reconsideration of who (central, local, community) carries them out?

- The building Act – perhaps through regional agencies to achieve economies of scale and scope but still locally responsive in terms of governance and preference.
- More of the enforcement provisions of the RMA could be delegated to TLA's e.g. Hutt already has a s15 RMA delegation but most TLA's don't – this is a means to meeting our communities environmental preferences and the economy of scope of combining much of the desired RMA audit role with our existing TW audit role – same visit but two jobs done – greater efficiency and to some degree pro-active and educative instead of reactive.
- The RMA approval/monitoring of WWTP discharges should be taken off RC's and given to EPA – too much variation is possible to suit factors beyond those relevant to the capacity of the receiving environment. Also as a source of variation around the country and over time is RC staff turnover - in terms of loss of technical competence. One or two staff out of many at EPA is not as great a risk as one or two staff out of a small pool at a Regional Council.

Q27 Does the local government regulation-making process lead to good regulation? If there is evidence to show that it does not, how could the process be improved?

Generally I believe it does (that is the experience of Hutt) however the linkage/dependence upon Central Govt involvement such as the ever delayed infringement regulations for the LGA2002 is frustrating.

To the greatest degree possible legislation should be complete when enacted not dependent upon an agency doing another step to make some aspects workable, i.e. we are still waiting for DIA to put in place the infringement regulations for the LGA2002.

Q28 Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

The introduction of HSNO in April 2004 eliminated the Dangerous Goods licensing regime with work premises the responsibility of DOL and or any TLA's/RC's they came to contractual arrangements with. Most TLA's/RC's took the opportunity to absolve themselves of a loss making activity given that whilst TLA's undertook DG activity the fees were prescribed by Central government and were significantly inadequate (at the time of Hutt deleting the activity it was in excess of \$80K costs with \$36K income).

However removal of the workplace responsibility has not removed all liability from TLA's with them retaining responsibility for private residences and public places. TLA's now have responsibilities and associated costs, virtually no cost recovery mechanism and no ability to share resourcing or training with in-house DG staff (as they do not exist anymore). To add to the woes whilst DOL and other formal enforcement agencies can tap into free or subsidised training there is usually no subsidy available for TLA staff despite them having responsibility.

Adding further to the irritation is that DOL who have the formal responsibility for responding to HSNO incidents involving workplaces, have so few skilled staff that TLA's like Hutt (generally the trade wastes officers) end up being the advisors at incidents to ensure someone fronts to assist the fire service.

The current HSNO regime does not function effectively, there are far too many enforcement agencies involved – so many in fact that at EPA (formerly ERMA) workshops there is still debate amongst the participants in exercises to assign lead role responsibilities for various types of incidents with some agencies proactive and some ducking and diving. The situation needs rationalisation.

Also refer to the Amusement devices regs – DOL set the fees a fair while back (\$11 fees since 19???) but it's the TLA's that need to enforce and cover costs of afterhours visits.

Q29 How might central government regulation-making better take account of the costs and impact on local authorities from the delegation of regulatory functions?

To start with, where Central Govt delegates a regulatory role they should also ensure that a cost recovery mechanism under the control of those to whom the delegation is given exists – i.e. Not repeat the mistakes of the DG regime, the DOL controlled "amusement devices" regulations which TLA's need to enforce but fees set and now outdated by DOL or recent provisions to control fees for Food Control Plan auditing.

Q30 How might central government better work with local authorities on the design, implementation and funding of delegated regulatory functions?

By actively listening

Q31 How could the RIA framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?

Not sure its broken ?

Q33 To what extent is the effective implementation of regulations delegated to local government hampered by capability issues in local authorities? Do capability issues vary between areas of regulation?

The extent can vary markedly depending upon the resourcing allocated and that adequate resourcing is sustained. The capability of a TLA will be determined by the capability of its staff, their resourcing, their access to appropriate training and access to adequate legal budgets. In smaller Councils some links in the chain may be broken due

to budget cuts or inadequate budgets due to the infrequency of the need for true enforcement action.

However rather than hamper capability local control of Trade Waste Bylaw management provides a direct cost benefit incentive for matching capability to need. Central control at the risk of central resourcing cuts could expose locally owned assets to financial and infrastructural risks. i.e TLA would be exposed to risks it had no ability to control unless Central govt was willing to take on the liability for damage to TLA assets or losses incurred – sewers and WWTP's.

Q34 Can you provide examples of regulatory cooperation and coordination between local authorities or between central and local government, and describe successes and failures?

Hutt City, GW and Upper Hutt City councils cooperate on a range of matters through formal and informal arrangements covering:

- Trade waste management and consenting
- HCC has officers warranted by GW as s15(1)B RMA enforcement Officers
- HCC is the contractor to UHCC for Environmental Health services
- HCC is contracted for UHCC ahrs HSNO, misc Health and Noise control issues
- HCC provides assistance to UHCC with Building officers

In addition there are other arrangements entered into such as:

- Capacity – a joint water services unit for Wgtn CC, HCC and UHCC.
- Wgtn RC (GW) now run the emergency management functions of the local councils.

The RMA enforcement MOU between Hutt and GW is working reasonably well, HCC would wish more delegation of decision making powers but though cumbersome the arrangement has produced positive benefits in terms of increasing the scope of work able to be carried out by its trade wastes officers – i.e it has promoted more efficiency cutting down on duplication and reducing travel liabilities for GW staff whilst making best use of the local knowledge of Hutt officers.

The WWTP and TW management (Hutt managing on behalf of HCC and UHCC) works well and has done so for many decades allowing efficient use of dedicated staff. Capacity is working well, producing savings and allowing an economy of scale and ability to obtain skilled staff.

Q35 What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

Where assets are shared between authorities – e.g. water or sewer – to avoid duplication. Where activities have a common legislative base irrespective of the authority – e.g. building or health. But essentially most regulatory activities could benefit from some degree of coordinated approach

Q36 What are the most important factors for successful regulatory coordination?

Having a clear and accepted goal, having adequate funding and control of that funding, local knowledge, having willing staff and Managers. E.g. despite virtually all local participants wanting to cooperate on SW enforcement issues the project stalled for 5 years until one senior GW manager left for Australia – the person was adamantly opposed to sharing control.

Q38 What are the main barriers to regulatory coordination?

Parochialism, capacity (the capacity to put resourcing into looking at alternatives), the acceptance of the need to enforce or apply standards

Q39 Are there examples in New Zealand where local authorities mutually recognise each other's regulations?

UHCC and HCC – share the Trade Wastes Bylaw (the Hutt Valley Trade Wastes Bylaw 2006), shared building Consent documentation in the Wgtn region.

Q40 Which local government regulatory areas (eg, planning and land use, building and construction, environmental regulation, public safety and food safety) impose the greatest unnecessary regulatory burden on individuals and businesses?

The question is loaded through the use of the word "*unnecessary*". Whether something is *unnecessary* or not is likely to vary depending upon which side of the fence you are on. To a developer any interference might be "*unnecessary*" whilst to neighbours or prospective future purchasers it might be a godsend.

Generally RMA or Building Consent related processes have the greatest ability within local government to create delays or burdens though applicants have the ability to minimise delays and un-expected work through putting in better quality applications – some are significantly deficient – e.g. an automotive paint shop ignoring HSNO issues their activities need to cater for. There is however some merit to better stream lining processes to avoid undue process requirements upon trivial consents.

Q41 In what ways are these regulatory areas unnecessarily costly (eg, are they too complex, prescriptive or unclear)?

Some of the processes could be better streamlined to avoid undue process time (and hence cost) being expended on Resource, Building, Health and other consents. However as noted above some applications are so deficient that even the intent of the applicant is unclear and they themselves must bear some responsibility for delays or additional costs.

Q42 Are there particular examples where local government approaches to regulatory responsibilities are especially effective at minimising unnecessary compliance costs for individuals and businesses?

In the trade wastes area consents fees and associated monitoring costs are based upon risks created by the discharger, the lower the risk, the lower the fee. Through improvements in the behaviour or quality of their discharges they can achieve reduced monitoring and consent fee costs or get to the stage where we exempt them from the need for a consent. Others who fail to meet their obligations face increased costs. Trade wastes management is done at a local level.

Q43 For which aspects of the regulatory process (eg, approval, monitoring, enforcement and appeals) could compliance costs to business be reduced without compromising the intent of the regulation? How could this be done?

There is potential for multipurpose monitoring visits where staff are suitably able to cover more than one area. Even just coordinating visits saves time for all parties. There is also potential for specialised enforcement sections able to more efficiently cope with wide ranges of legislation.

Q44 How well are the principles on which local authorities are required to base the funding of regulatory activities applied?

Reasonably well known and applied here with efforts to determine activity costs.

Q45 Are there examples of where cost recovery is reducing compliance with regulations and reducing their effectiveness?

Possibly in the Building and planning areas with cost recovery for some activities – e.g. swimming pool and spa pool consents, and greater than \$700 resource/Building consent

for garden sheds adjacent to fences with the shed itself costing \$400 to purchase, people tend to ignore the compliance issue because of the cost. ????

Q46 To what extent are councillors involved in the administration and enforcement of regulation? Has this raised issues in regard to the quality of regulatory decision-making and outcomes?

Through the process of creating Bylaws and they should have no further input

However input has occurred and does occur particularly in the RMA area with councillors represented on enforcement decision making committees – this has proved questionable when their fellow farmers are inline for enforcement action.

An example I am directly familiar with involved the first two Trade Waste prosecutions which were carried out by Hutt CC in 2003 however it should have been three. The then Mayor interfered, even seeking the opinion of the Minister of Local Government (who tactfully declined to get involved) and the large third company got off with a warning – they had played the “as a significant employer in the valley...we might close if you prosecute us” card.

Are the current processes for reviewing existing regulation adequate? Could they be improved?

I believe they work well for bylaws without undue cost

Q49 In which regulatory areas are there good regulatory review mechanisms? In which regulatory areas are there poor or insufficient regulatory mechanisms?

LGA2002 derived bylaws have good well defined review provisions

Q50 Who should undertake regulatory review – the responsible agency or an independent body?

In the case of Bylaws I believe the agency can do it but there must be a public consultation phase. I also note though that in the case of Trade Waste Bylaws I believe it appropriate that the TLA controls the review as TW bylaws are intended to protect TLA assets, an independent bylaw may not ensure that the assets are adequately protected exposing the community to costs created by industrial dischargers (the greatest risk group to sewers)

Q51 Is there a sufficient range of mechanisms for resolving disputes and reviewing regulatory decisions of local authorities?

There is a tendency at consenting level (e.g. Trade waste consent and health licences) to control both issue of consents and review processes – this is a pragmatic result of a limited pool of staff operating in those areas and a need for familiarity. I believe there are other means available however with good decision making generally the norm we have had little need to find alternative independent review options

Q52 Are some appeal mechanisms used excessively, frivolously or for anti-competitive reasons?

Perhaps in the RMA area – e.g. supermarkets opposing the applications of competitors.

Q53 In what areas of local government regulation is performance being monitored effectively?

RMA and BA timeframes though meeting timeframes **does not** equate to the quality of the output – a fast outcome may be good for a developer but does it mean that it is good for the integrity of the design, the neighbours, future owners or council’s liability ?

Q54 Are there areas of local government regulation where performance is not being monitored and assessed?

Whilst there are internal measures for consents issued (e.g. Trade Waste or Health) they mostly reflect timings and monitoring of income received. Some areas of regulatory activity are difficult to measure. For example whilst TLA's or RC's can identify court cases or fines or abatement notices issued the number merely indicates activity not success or failure of the regulatory system. A successful regulation regime is well accepted and adhered to and having less formal enforcement action can be a sign of success not a failure because the numbers are down.

Q55 Is the current monitoring system effective in providing a feedback loop through which improvements in the regulatory regime can be identified and rectified? What examples are there of successful improvements to a regulatory regime?

I believe systems based upon timeframe achievement will only result in timeframe improvements potentially at the expense of quality and effectiveness in achieving the aims of the regulation. Something akin to the BC audit process is a better way of assessing performance and getting meaningful feedback on which to build improvements

Q56 What challenges or constraints do local authorities face in developing and sourcing data for better practice regulatory performance measures?

The costs of data accumulation. E.g. we carry out Biosolids metals levels monitoring (of our Waste Water Treatment Plant - WWTP). This monitoring serves the purpose of being a "truth teller" for how well industrial dischargers are actually managing their individual discharges as all metals end up concentrated in the biosolid irrespective of what our less frequent industry monitoring tells us. The alternative is greater monitoring of the individual sites. However whilst the individual industries would pick up the increased cost for more monitoring of their own discharges (to prove it is acceptable and more readily identify transgressors) Council picks up the cost of WWTP monitoring. The total costs are less with this approach but Councils costs are greater. We only have so much money.

There is also the challenge of getting appropriate information to demonstrate the effects of regulatory effort when faced with multiple variable factors affecting the outcome – e.g. we believe our mostly educative efforts have made a difference (incidents have declined) to the number of concreting wastewater related pollution incidents but is it due to our efforts, building activity decline, the efforts of their industry or all of the above ???

Q59 What regulatory performance indicators are most commonly used by local authorities? Can you provide examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

Consent processing times which is not always a useful measure of quality. Example of good monitoring system – Inflow reduction (SW to sewer illegally, breach of LGA), monitor number of property visits, identify number of faults in each category, identify faults still existing upon subsequent non-compliance re-visit rounds, pursue to very low non-compliance levels, traceable at all stages, the extra SW impacts upon flowrates in the sewer system so it can be monitored either through flow monitoring or at lower cost by anecdotal evidence in terms of sewer overflows in heavy rain. I.e we have measureable inputs and measureable outputs.

Q60 What kind of centrally provided data would enhance the local government regulatory monitoring regimes?

RMA – Central enforcement actions database – allow consistent dissemination of information and identification of problem operators – e.g. we have a vehicle wrecker who also caused issues at their Canterbury site. Would assist with targeting of effort and consistency of approach.

RMA – WWTP consent limits.

Perhaps greater encouragement (or management of) the Model Bylaw process along with model info handouts/brochures – e.g. “*stick logo here*” type documents to save everyone re-inventing the wheel and provide some national consistency.

Q61 Are there quality issues in existing nationally available data sets that would need to be resolved before developing national performance measurement regimes?

Yes for some – e.g. WWTP data – not all carry out the same levels of monitoring and some debate as to the value of some monitoring approaches.

Q62 What are the specific characteristics of individual local authorities that make local authorities comparable with regard to their regulatory performance?

Nationally applicable Acts used – e.g. RMA, Building Act, pending Food Act – i.e level playing field with little or limited ability to add local flavour and do not involve the maintenance or protection of Council owned assets.

Q65 Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?

Potentially the best way to get a measure free from local bias.

Thanks for the opportunity to comment

Gordon George
106 Mohaka Street
Wainuiomata
Lower Hutt 5014

W 04-570-6819
M 027-222-5714