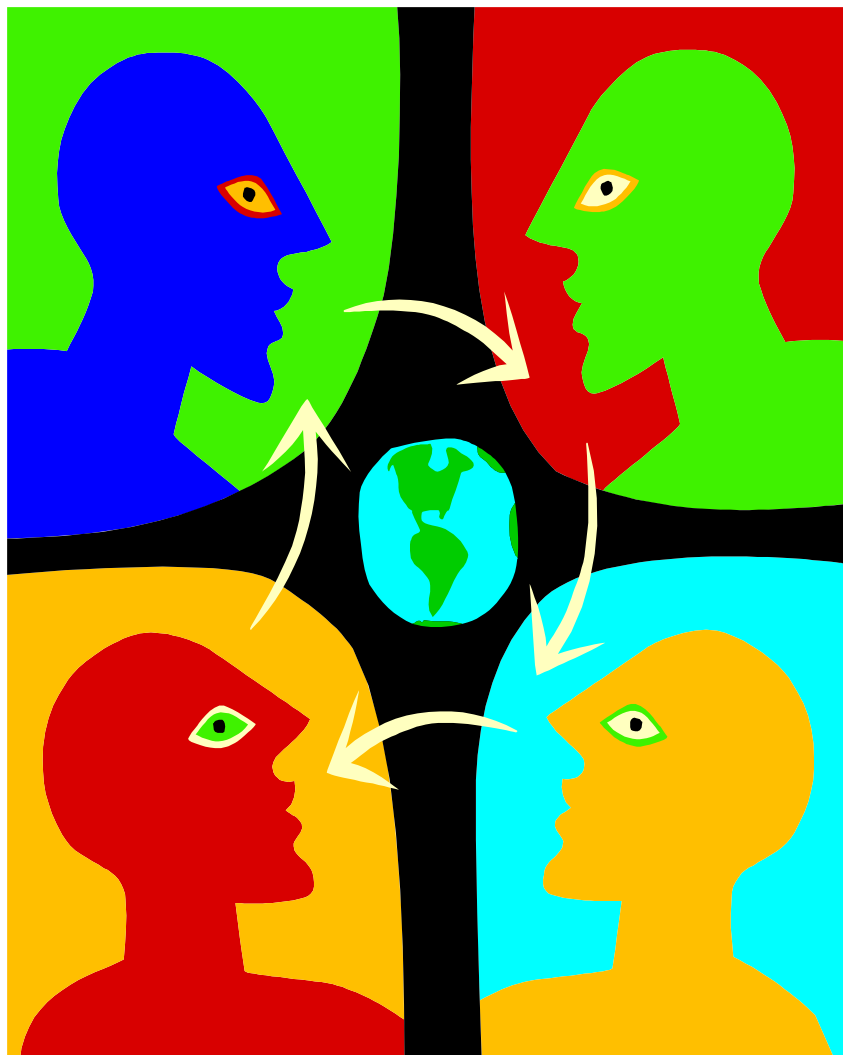


**Client:** KemI (Swedish Chemicals Agency)

**Case No:** 240-H12-02020

## Review of the interdepartmental co-ordination of chemicals management in South Africa





# Table of Contents

<b>Abbreviations</b>	<b>2</b>
<b>1. Introduction</b>	<b>3</b>
<b>2. Approach to the study</b>	<b>4</b>
2.1. Scope	4
<b>3. Background to the study</b>	<b>7</b>
3.1. The international context	7
3.2. The South African context	8
<b>4. The rationale for co-ordinating chemicals management</b>	<b>10</b>
4.1. Substantive reasons	10
4.2. The legislative imperative	11
<b>5. The meaning of co-ordination</b>	<b>14</b>
<b>6. Overview of the current state of co-ordination</b>	<b>16</b>
6.1 Function and role of the NCCM	17
6.2 The operation of the NCCM	18
6.3 Function and role of the MCCM	19
6.4 Overview of other co-ordinating bodies	19
<b>7. Findings and observations</b>	<b>21</b>
7.1. The need for co-ordination	21
7.2 Departmental capacity and operations	21
7.3 Current focus of co-ordination	23
7.4. Current co-ordination mechanisms	24
<b>8. Recommendations</b>	<b>27</b>
8.1. Organising principles and tools for co-ordination	27
8.2. Redefining the role of the N/MCCM	29
8.3. Bi-lateral interactions and networking	30
8.4. Building the capacity of the chemicals regulatory authorities	30
8.5. Vertical co-ordination	31
<b>9. Summary of workshop proceedings</b>	<b>32</b>
9.1 Discussion and agreements reached	32
9.2 Prioritisation	35
9.3 Way forward	36
<b>Annexure A: Workshop attendees</b>	<b>38</b>

# Abbreviations

DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DOH	Department of Health
DOL	Department of Labour
dti	Department of trade and Industry
EMI	Environmental Management Inspector
GHS	Globally Harmonised System of Classification and Labeling of Chemicals
KemI	Swedish Chemicals Agency
MCCM	Multi-stakeholder Committee on Chemicals Management
NCCM	National Committee on Chemicals Management
NEMA	National Environmental Management Act, 1998
PSC	Project Steering Committee developed as part of the DOL/ KemI partnership
Sida	Swedish International Development Cooperation Agency
UNEP	United Nations Environment Programme

# 1. Introduction

KemI, the Swedish Chemicals Agency, and the South African Department of Labour (DOL) have entered into a partnership. Part of this cooperation is financed by Sida under the ‘Partner Driven Cooperation’ (PDC) modality. In terms of the partnership five outcomes have been identified, one of which is exploring ways to optimise the interdepartmental co-ordination of chemicals management in South Africa.

KemI accordingly appointed Orgut to conduct a study on current approaches to the co-ordination of chemicals management by government departments in South Africa and to make recommendations regarding how co-ordination could be improved. The team comprised of –

- Dr Jenny Hall (team leader and local consultant)
- Mr Per Rosander (Swedish chemicals expert)
- Mr Rob Short (local resource to the team leader)
- Mr Jan Bargheer (quality assurance).

A draft report presenting Orgut’s preliminary findings and recommendations was produced in June 2013. That report was intended to provide both a context and contribution to the discussions that were held between the relevant departments at a workshop in August 2013. This report is the final report. The main change between this report and the draft report is that this report includes the views of the departments that were expressed during the workshop.

In addition to this section, the report is made up of a further 8 sections –

- section 2: describes the approach that was adopted
- section 3: provides a brief background context to the study
- section 4: explains the substantive and legislative need for co-ordination
- section 5: outlines the different types of co-ordination
- section 6: provides an overview of current approaches to legislation
- section 7: presents the teams findings
- section 8: sets out the team’s recommendations
- section 9: sets out the key points which emerged during the interdepartmental workshop.

## 2. Approach to the study

### 2.1. Scope

As alluded to in the previous section, the overall objective of the project was to develop a set of recommendations regarding approaches to chemicals co-ordination in South Africa for the consideration of the relevant government departments. In undertaking the project, the scope and approach adopted by the team was informed by four factual issues.

Firstly, the Terms of Reference excluded chemicals management related to food and pharmaceuticals.

Secondly, the Department of Environmental Affairs currently convenes an interdepartmental committee called the National Committee on Chemicals Management (NCCM). Because of the NCCM's existence, it was agreed that the project should focus on the opportunities presented by the NCCM and its current strengths and weaknesses. The team accordingly used the NCCM as a point of departure for considering the co-ordination framework.

Thirdly, the current allocation of chemicals management functions to different departments was accepted as a given constraint. In view of this some options which have been adopted internationally, such as the establishment of a dedicated Ministry or re-allocating mandates between Ministries, have not been discussed.

Finally, the project was a short term one, with Dr Hall and Mr Rosander being allocated approximately two weeks substantive time to undertake the research and to draft this report. This reality limited the extent to which certain issues could be explored or followed up in detail. In addition, it resulted in the focus of the team's work being placed on co-ordination amongst national departments. Nevertheless, the team is aware that the provincial and local spheres of government also have responsibilities in respect of chemicals management. For example, the provinces are largely responsible for administering the Hazardous Substances Act, 1977 which regulates industrial chemicals and local government is responsible for air emission permitting and certain emergency responses.<sup>1</sup> Departments in the provincial and local spheres of government are accordingly important role-players in the successful implementation of a comprehensive chemicals management system and further attention may need to be given to co-ordination between all three spheres of government in the future.

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<sup>1</sup> Act 15 of 1977.

## 2.2. Methodology

The team's approach to the project involved both desk-top reviews and interviews with representatives of most of the key national government departments involved in chemicals management. During the desktop review, the team reviewed the following types of literature and documentation –

- strategic documents and reports produced by the different departments;
- minutes of NCCM and Multi-stakeholder Committee for Chemicals Management (MCCM) meetings between 2007 and 2013;
- national legislation;
- approaches adopted by other countries;
- international guidelines; and
- organisational theory.

The interviews were conducted over a five day period in April 2013. They were based on a semi-structured questionnaire which was developed by the team to facilitate a consistent approach to the interviews. The main aims of the interviews were to –

- understand, or confirm, the team's understanding of the roles and responsibilities of the departments that are involved in chemicals management;
- identify the types of co-ordination that officials in the various departments require;
- gain an insight to the successes that have been achieved in co-ordination activities; and
- understand the perceptions of officials regarding co-ordination issues that require improvement as well as reasons why barriers to optimal co-ordination exist.

The identification of departments that should be included in the interview process was based on the experience of the team and the input of DOL. Those actually interviewed were –

- Department of Agriculture;
- Department of Environmental Affairs;
- Department of Health;
- Department of Labour; and
- Department of Trade and Industry.<sup>2</sup>

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<sup>2</sup> Interviews were unfortunately not held with the Department of Transport – a key stakeholder - as a meeting with the relevant officials could not be set up during the interview period or very shortly thereafter. The department subsequently indicated that they were available to meet, but by that time it was not possible for the team as they were out of town.

Many of the officials from these departments as well as representatives from KemI gave generously of their time and demonstrated a clear willingness to contribute to the project. Their time and inputs are accordingly acknowledged with gratitude.

In addition, the team's experience is that the barriers to successful co-ordination are quite often located in 'soft issues' rather than 'hard' ones. In other words, sometimes barriers can be based more in issues such as personality clashes or personal needs not being met than those that relate to the frequency of meetings, or even the agenda of meetings. Because both types of issues have real consequences for the efficacy of co-ordination, the team wanted to establish a context in which officials were able to talk openly. The interviewees were accordingly offered confidentiality and invited to share their views freely on that basis. The team believes that this was a benefit for the process, as many officials offered views that may not have been given if the interview was conducted on an 'on the record basis'. In line with this approach, the discussion that follows - for the most part - extracts general themes or perceptions without indicating which, or how many, officials support the comment.



## 3. Background to the study

### 3.1. The international context

Synthetic chemicals are abundant in every aspect of modern society. Well over 100 000 chemical substances have been identified in the technosphere.<sup>3</sup> Some of these are probably not harmful to humans, wildlife and the non-living environment since they break down rapidly after their intended use and do not accumulate in unhealthy levels. However, an as yet unknown portion of chemicals do have an adverse effect on health and the environment. Scientific estimates and studies indicate that the number is significant. More systematic testing being carried out on new substances that are to be introduced reveals that about 70% of them are to be classified as being hazardous.<sup>4</sup> As so little is known about the intrinsic properties of existing substances it can be assumed that the majority of chemicals in use should be classified. Since this is not the case, adequate risk management measures are not taken. The lack of research data relating to toxicological properties therefore presents a major challenge in attempting to manage and control the wide flow of synthetic chemicals.

However, what is clear is that environmental and health impacts emanate throughout the lifecycle of many chemicals and that the effects are widespread and multidisciplinary. These widespread, diverse and complex impacts of chemicals have presented a challenge for governments as to how they should be regulated in a way which protects health and the environment without unduly hampering our quality of life.

At an international level concerns regarding the impact of chemicals have resulted in the adoption of a number of international conventions and agreements, including -

- Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention);
- Rotterdam Convention on the Prior Informed Consent (Rotterdam Convention);
- Montreal Protocol on Substances that Deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal;
- Global Harmonized System for the Classification and Labelling of Chemicals(GHS);
- International Convention on Civil Liability for Oil Pollution Damage;
- International Labour Organization Convention 170 regarding the Safety of the Use of Chemicals at Work;
- Johannesburg Plan of Implementation (JPOI);

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<sup>3</sup> The part of the physical environment affected through building or modification by humans.

<sup>4</sup> Hansson and Rudén, 'A Risk-Neutral Default for Chemical Risk Management' (2008) 51 *American Journal of Industrial Medicine* pp 964-967.

- London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter;
- United Nations recommendations on the Transportation of Dangerous Goods; and
- the OECD Chemicals Programme on Dangerous Goods.

Notwithstanding these international conventions and agreements, within specific countries and because chemicals affect different departmental mandates such as health, environment and transport; legislation on chemicals has often developed in a piecemeal manner and, importantly, without an integrated strategy for the management of their impacts as a whole. Although individual countries have adopted different approaches, few have established a department dedicated to chemicals regulation and management. This means inevitably that in most countries more than one department has responsibilities in respect of chemicals management. A major challenge in achieving a comprehensive approach to managing the impacts of chemicals is ensuring that the co-ordination and harmonisation of different departments' activities and legislation.

#### SUMMARY NOTE:

Countries have taken quite different approaches to organising regulatory instruments and enforcement systems. For instance, the European Union (EU) has created a framework regulation, REACH, that covers almost all aspects of chemicals control, and has accordingly also established a new authority, the European Chemicals Agency (ECHA) to deal with all aspects of the regulation. Sweden created a special inspectorate for chemicals control (KemI) in 1986. KemI is mandated to control the placing on the Swedish market (by import or manufacture) of the entire range of chemicals with a few exceptions (such as food additives, pharmaceuticals and cosmetic products, which is in within the mandate of the food safety and pharmaceutical control authorities). Most other countries' approaches, however, are similar to South Africa where functions and responsibilities are divided over several different governmental departments.

### 3.2. The South African context

Chemical production and trade is a significant industrial sector in South Africa. The South African chemical industry, including fuel and plastics fabrication as well as pharmaceuticals, is the largest of its kind in Africa and manufactures around 300 mostly low value and high volume chemicals. The industry is dominated by the basic chemicals sub-sector whose liquid fuels, olefins, organic solvents and industrial mineral derivatives together account for around 31% of chemicals production in the country. The other 10 subsectors are –

- plastic products (approximately 20% of production);
- pharmaceuticals (8%);
- inorganic chemicals (8%);
- primary polymers and rubbers (7%);
- organic chemicals (6%);
- rubber products (5%);
- bulk formulated (5%);

- consumer formulated chemicals (5%); and
- pure functional and specialty chemicals (5%).

According to Statistics South Africa, sales of chemical products in 2008 amounted to R 318 billion. A few large upstream producers are responsible for 60 to 70% of the chemicals sector turnover. Currently more chemicals are imported into South Africa than exported, but the South African Government has prioritised the development of the chemical sector.

The need for regulatory control of the sector is obvious for many reasons, including the fact that a lack of adequate legislation hampers the growth of the sector. For example, the exportation of chemicals may be blocked where local companies do not comply with labelling requirements and chemical safety information. In this regard South Africa has a number of laws that regulate chemicals, including the following –

- National Environmental Management Act, 1998 (NEMA)
- National Environmental Management: Air Quality Act, 2004
- National Environmental Management: Waste Act, 2008
- Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947
- Hazardous Substances Act, 1973
- Import and Export Control Act, 1963
- International Trade Administration Act, 2000
- Customs and Excise Act, 1964
- National Road Traffic Act, 1996
- National Water Act, 1998
- Occupational Health and Safety Act, 1993
- Dumping at Sea Control Act, 1980
- Marine Pollution (Intervention) Act, 1987
- Mine Health and Safety Act, 1996.<sup>5</sup>

In addition, South Africa has participated in, and supported, several of the initiatives that flowed from the adoption of Agenda 21. For example, it has ratified the Stockholm and Rotterdam Conventions and agreed to implement GHS. In preparation for implementing its commitments, the South African government has undertaken a number of studies with the aim of identifying key issues and implications. Ultimately the implementation of these international obligations will require that they be domesticated into one or more pieces of national legislation, the implementation of which needs to be co-ordinated.

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<sup>5</sup> Act 107 of 1998; Act 39 of 2004; Act 59 of 2008; Act 36 of 1947; Act 15 of 1973; Act 45 of 1963; Act 71 of 2000; Act 91 of 1964; Act 93 of 1996; Act 36 of 1998; Act 85 of 1993; Act 73 of 1980; Act 64 of 1987 and Act 29 of 1996 respectively.

## 4. The rationale for co-ordinating chemicals management

At the start of the study the team reviewed the underlying justification for co-ordination and the broader substantive and legislative context within which it must take place. Although the information below may be already known by some officials, it is included to ensure that all officials understand and agree with the point of departure that the team adopted.

### 4.1. Substantive reasons

The development of various chemicals has added to our quality of life. It is for this reason that Elizabeth Dowdeswell, the Executive Director of the United Nations Environment Programme (UNEP), said that *'the use of chemicals has become an essential means for achieving economic and social development in countries'*.<sup>6</sup>

However, as mentioned in section 3, chemicals can have a significant negative impact on the environment and health. For example, when chemicals get into the food-chain they disrupt the functioning of ecosystems and biological processes and in the case of constant or acute exposure, cause severe sickness and death.

In many situations it is tempting to downgrade a focus on implementing a coherent chemicals management system in favour of other pressing priorities such as housing; access to health and basic services; and education. However, in these situations it also needs to be born in mind that a failure to prioritise chemicals management can have equally significant consequences as deprioritising other priorities. Some the effects of not managing chemicals soundly have been set out in UNEP's *Cost of Inaction on the Sound Management of Chemicals* report. These include the following –

- in 2011 the World Health Organisation reported that 4.9 million deaths – 8.3% of the total global deaths in 2004 – were attributable to the exposure and management of selected chemicals;
- the cost of injuries to pesticide users on smallholdings in 37 sub-Saharan African countries in 2005 amounted to USD 4.4 billion;
- the cost of inaction related to pesticide use is greater than the total official development assistance to Africa for general healthcare; and
- the return on investment in a sound chemicals management programme can be significant – for example in Uganda it was estimated to be USD 17.2 million from 2010 to 2025.<sup>7</sup>

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<sup>6</sup> UNEP, *Legislating Chemicals: An Overview* (1995), p 6.

<sup>7</sup> (2013) pp 11 -13.

These findings show that there are significant environmental and financial implications of not implementing an effective chemicals management approach that targets the risks which chemicals pose to the environment and health. In the case of South Africa, the eventuation of the environmental implications will violate people's right to an environment that is not detrimental to their health or well-being. In addition, there are now numerous international instruments or laws that regulate chemicals management, which if not implemented can have trade implications for South Africa. Where the responsibility for managing chemicals falls within the responsibility of different government departments – as is the case in South Africa – such an effective system cannot be achieved without those departments working in partnership and striving to reach a common goal of risk reduction. Co-ordination is therefore required to ensure that -

- the impact of chemicals in the country is minimised and at least mitigated to acceptable levels;
- the regulatory regime is comprehensive enough that it can be effective and without gaps; and
- people's expectations to have their environmental right is realised.

**SUMMARY NOTE:**

Co-ordination is desirable from an environmental, health and trade perspective.

## 4.2. The legislative imperative

In some instances the approach to co-ordination is expressly set out in legislation. For example, the NEMA used to contain provisions regarding the establishment, functions and operations of the Committee for Environmental Co-ordination. However, there is currently no statutory committee which provides for the co-ordination of chemicals management in its entirety. This does not mean that there is no legislative requirement for departments to co-ordinate their activities. A brief overview of the legislative context is provided below.

The Constitution provides the overarching framework within which governance must take place. In terms of section 40(1) of the Constitution, government is divided into three equal spheres of government i.e. national, provincial and local government. Each of the spheres has a range of powers and functions that they must discharge. The functional areas which fall within the responsibility of each sphere of government are set out in Schedules 4 and 5 of the Constitution. Schedule 4 lists areas which fall within the concurrent competence of the national and provincial spheres. Schedule 5 relates to the areas of exclusive provincial competence. Both Schedules are divided into Part A and B. Part B lists those areas which local government has legislative and executive authority over. Areas not listed in either Schedule are, by default, national competences.

These Schedules accordingly provide the primary source for understanding who the regulatory authorities for chemicals management are. In this regard, a reading of the Schedules makes it clear that chemicals management is administratively fragmented between the different spheres of government. The division of each sphere into different departments also makes it inevitable that chemicals management will be scattered between departments

within each of the spheres. These types of fragmentation are known as vertical (between the spheres) and horizontal (within the sphere) fragmentation.

The key role players involved in chemicals management at a national level and their role is summarised in the table below.

DEPARTMENT	ROLE
<b>Department of Agriculture</b>	Lead department for the regulatory control of agricultural chemicals
<b>Department of Environmental Affairs</b>	Lead department for chemicals co-ordination; Environmental aspects of chemicals, including waste management and air quality
<b>Department of Health</b>	Regulatory control of industrial chemicals
<b>Department of Labour</b>	Lead department for the implementation of GHS; Regulatory control regarding use of chemicals in the workplace (excluding mines)
<b>Department of Mineral Resources</b>	Regulatory control regarding chemicals used in mining operations
<b>Department of Trade and Industry &amp; Department of Economic Development</b>	Management of the import and export of chemicals; promotion of the chemicals sector
<b>Department of Transport</b>	Regulatory control over the national and cross-boundary transportation of chemicals
<b>Department of Water Affairs</b>	Indirect control where chemicals impact on water quality
<b>South African Revenue Services</b>	Customs and excise
<b>Others with secondary involvement</b>	Department of International Relations; Department of Science and Technology; South African Bureau of Standards

The table shows that a number of departments are involved in chemicals management which have different roles and lead agency responsibilities. Ideally all of these departments should be involved in any co-ordination efforts if an integrated and comprehensive approach to the implementation of chemicals management is to be assured. (As will be seen from the discussion below this does not mean that all of the departments have to be involved all of the time, but rather that all relevant departments participate in some form on a particular issue).

The drafters of the Constitution recognised that the Schedules would result in administrative fragmentation and potential overlap in respect of several functional areas. They accordingly introduced the principle of co-operative governance in section 40. The underlying principle of co-operative governance is that the different spheres of government, and departments within each sphere, must co-operate and consult with each other. These principles apply both vertically and horizontally.

The principles of co-operative governance are set out in section 41 of the Constitution. They do not only apply vertically between the spheres of government, but also horizontally amongst the different organs of state and departments within a sphere of government. Several of the principles set out in section 41 of the Constitution impose an obligation on departments to co-ordinate. For example, section 41(1)(h) states that the spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by –

- (i) *fostering friendly relations;*
- (ii) *assisting and supporting one another;*
- (iii) *informing one another of, and consulting one another on, matters of common interest;*
- (iv) *co-ordinating their actions and legislation with one another;*
- (v) *adhering to agreed procedures; and*
- (vi) *avoiding legal proceedings against each other.*

Notwithstanding this requirement, any co-ordination must be done with an attitude of respect to other departments' functions and powers. This is because section 41(1)(e) provides that all spheres of government and all organs of state within each sphere must '*respect the constitutional status, institutions, powers and functions of government in other spheres*'. This provision reinforces the notion that even though the different spheres of government are to co-operate and consult each other, ultimately they are all distinct entities. It also requires that a sphere of government, or department within a sphere, must not usurp the powers of other spheres and must respect the constitutional status of other spheres.<sup>8</sup>

In addition to the Constitution, other legislation also requires co-ordination between government departments. For example, NEMA contains a set of principles which are binding on organs of state in respect of environmental matters – of which chemicals management will form part. Several of these principles imply or require co-ordination. In this regard, the principle set out in section 2(4)(1) states that '*there must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment*'.

#### **SUMMARY POINT:**

Legislation requires co-ordination to take place. However, it allows the different departments the flexibility to decide how that co-ordination should be undertaken in practice.

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<sup>8</sup> The Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) was passed to provide more substance to the constitutional requirements. It sets out structures and institutions for intergovernmental co-operation and consultation as well as mechanisms and procedures to resolve intergovernmental disputes. A primary objective of the Act is to establish a framework for the national government, provincial governments and local governments in order to promote and facilitate intergovernmental relations and the settlement of disputes related to issues of intergovernmental relations.

## 5. The meaning of co-ordination

Although the substantive and legislative discussion set out above explains the need for co-ordination, it does not explain what is meant by co-ordination. In this regard, co-ordination can mean different things to different people. For example, UNEP indicates that three types of co-ordination should be considered i.e. –

- co-ordination at the (ministerial) policy level;
- co-operation between managers; and
- co-operation at the enforcement level.<sup>9</sup>

UNEP's approach emphasises co-ordination that may be required amongst different types and levels of role-players. Whilst it is a useful approach, caution must be exercised not to limit the development of mechanisms by basing them on the defined group of role-players who will be involved.

An alternate point of departure could be to identify the types of issues or activities that require co-ordination and then develop co-ordination mechanisms which respond to the requirements of those issues. The types of activities that may be identified include strategic, legislative and implementation ones such as –

- developing a comprehensive regulatory framework;
- harmonising legislation across departments and addressing legislative conflicts and overlaps;
- 'domesticating' (implementing) international instruments and obligations;

### **POLICY CO-ORDINATION:**

The reason for co-ordinating chemicals management at a policy level is that different departments are responsible for developing various aspects of chemical policy. Because of their functional objectives, acting alone they are likely to do so from the perspective of their particular sectorial mandate. In the absence of co-ordination, there is a risk that the laws or policies that are developed by different departments may not, as a whole, address all the aspects of regulatory control that are required to implement a comprehensive chemicals management system. At worst, they may even adopt contradictory approaches.

### **IMPLEMENTATION CO-ORDINATION:**

The implementation of a national chemical management system requires different departments to undertake a range of specific operational activities. These include permitting, monitoring and enforcement. Departments usually carry these out on their own. However, co-ordination may be required, or beneficial, where –

- departments wish to streamline approaches and pool resources to maximise the impact of a particular implementation activity such as compliance and enforcement; or
- one department needs the input or resources of another department. For example, the Department of Trade and Industry currently requests the input of the Department of Environmental Affairs in certain permitting processes.

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<sup>9</sup> UNEP DTIE Chemicals Branch *Technical Guidance on the Development of Legal and Institutional Infrastructures and Measures for the Sustainable Financing for Sound Management of Chemicals – draft* (October 2010) pp 38 – 42.



- developing national positions for international negotiations;
- ensuring that strategic documents are developed and provide an adequate basis for implementing policy approaches that have been adopted;
- procedures for undertaking interdepartmentally linked activities such as permitting;
- identifying opportunities for joint implementation activities such as targeted enforcement exercises;
- sharing knowledge and resources;
- training and capacity building.

In this instance approaches to co-ordination start with the activities and the role-players involved may be drawn from any of three categories indicated by UNEP.

Whichever approach is adopted, developing an effective approach to co-ordination requires a common understanding amongst the role-players of the type or types of activities that need to be co-ordinated if the expectations and needs of those role-players are to be met and the co-ordination mechanisms are to remain focused and effective. In other words, if all the role-players were to be questioned, their responses should be the same to questions such as –

- what is being co-ordinated?
- why is it co-ordinated?
- how is it co-ordinated?

## 6. Overview of the current state of co-ordination

Since 1994, South Africa has ratified or accepted a number of international conventions or initiatives related to chemicals management. These resulted in a range of implementation obligations across the departments. The increase in the scope of chemical management caused the South African government and statutory bodies to consider what steps needed to be taken to ensure that chemicals management is undertaken effectively. The outputs of several studies found that the existing approach to co-ordination amongst the relevant departments was inadequate. For example, the *South African National Profile (2002-2005)*<sup>10</sup> dealing with to the legal, administrative and technical aspects of chemicals management in the country concluded that there were no formalised structures for the national co-ordination of chemicals production, import, export and use and stated that -

*... the greatest threat to effective management of chemicals in South Africa is the lack of coordination, funds and resources. It is thus important for South Africa to invest in setting up a national co-ordination structure and make available adequate funds and resources for enforcement of legislation pertaining to chemicals management throughout the chemicals life cycle.*<sup>11</sup>

Two non-statutory structures were accordingly set up to improve existing communication and co-operation -

- **National Committee for Chemicals Management (NCCM)** which is an interdepartmental committee, comprising of members from 17 governmental departments, all of which have some form of responsibility relating to chemicals management.
- **Multi-stakeholder Committee for Chemicals Management (MCCM)** which, as the name suggests was a multi-stakeholder forum comprising of the members of the NCCM, industry, labour, NGOs, academia, research institutions and statutory bodies involved in chemicals management. (Other institutions also participated on an *ad hoc* basis.)

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<sup>10</sup> Department of Environmental Affairs and Tourism, *South African National Profile 2002-2005 - A comprehensive assessment of the national infrastructure relating to the legal, administrative and technical aspects of chemicals management in South Africa* (undated).

<sup>11</sup> Page xiv.

## 6.1 Function and role of the NCCM

According to the NCCM's Terms of Reference (ToRs) the committee should -

*...facilitate a co-operative approach for the implementation of safe management of hazardous chemicals with a view to promoting sustainable development and covering chemicals at all stages of their lifecycle by various Departments as mandated by their specific legislation. It will deal with relevant national legislation and regional and international obligations.<sup>12</sup>*

The ToRs also state that the NCCM is to develop and implement an annual work programme and calendar to organize the work and stakeholder consultation.

A detailed reading of the ToRs makes it clear that the NCCM has a very broad and ambitious scope. Almost any issue linked to chemical management seems to fall within its ambit. The only stated exclusions in the ToRs are policies, laws and conventions relating to biological weapons or the Framework Convention on Climate Change, as there are well-established mechanisms in place already to deal with these specific issues.

In this regard the ToRs include a list of no less than 13 functions for the NCCM. Six of the functions focus directly on co-ordination in the traditional (conventional) sense. These are as follows –

- **Facilitate closer cooperation between Departments** to support effective implementation of national laws and policies and compliance with commitment in terms of international instruments as listed in Annexure B.
- **Advice on the alignment of action plans** to implement national laws, policies and international instruments/agreements as it relates to the sound management of chemicals.
- **Receive progress reports and updates on implementation** of national laws and policies and international instruments, and report on progress on an annual basis. Report on progress on an annual basis.
- **Review the implementation** of national laws and policies and international instruments.
- Convene the Multi-stakeholder Committee and **coordinate the exchange of information** between the Committee and the Forum.
- **Address emerging issues** on chemicals management as they arise.

Other listed functions suggest a more proactive or advocacy role. For example, the ToRs also include the following -

- **Raise awareness** to Departments and institutions on the importance of sound management of chemicals with a view to secure the necessary financial and technical resources for implementation of national laws and policies and international instruments and agreements.
- **Facilitate** the development of action plans to implement national laws, policies and International instruments/agreements
- **Promote** coherent governance of chemicals at national, provincial and local levels.

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<sup>12</sup> Terms of Reference: National and Multi-stakeholder Committees on Chemicals Management (undated).

- **Promote** the strengthening of South Africa's national chemicals management coordination mechanisms, capacities, and abilities.
- **Mobilize** the Multi-Stakeholder Committee to support national implementation plans developed for South Africa regarding chemicals management for sound environmental management

A third aspect of the TORs is that one function appears to suggest that the NCCM should also be in a position to negotiate agreements and national positions, prior to international meetings. The wording of this element of the ToRs is as follows -

- Undertake preparatory work, agree on South Africa's **negotiating position and develop national positions** for the meetings of the Conventions and Agreements where a coordinated response is required.

Finally, another function concerns capacity building amongst the government departments to deal with chemicals management -

- Work to ensure that departments and institutions commit the necessary financial and technical resources for implementation of national laws and policies and international instruments and agreements.

## 6.2 The operation of the NCCM

The NCCM has been convening 2-4 times a year since its establishment in 2007. For a period of time the chair was rotated between the Department of Environmental Affairs (DEA) and the Department of Trade and Industry (the dti). At present DEA both chairs the meetings and provides the secretariat function.

The minutes reveal that the following types of discussions or agenda items have been tabled at these meetings -

- reporting back from international meetings/events.
- discussing national implementation activities emanating from international decisions.
- sharing experiences and presenting intra-departmental functions, roles and structures to others.
- discussions on draft positions/statements

Initially, the NCCM meeting agenda focused on presentations on issues of relevance to co-ordination, such as institutional arrangements framework for chemicals management in South Africa, the chemicals sector plan (ASGISA context) and the NEDLAC chemicals summit agreement. The group was also informed about work to set up stakeholder groups to improve coordination and sector growth within various departments.

Meetings during the first years focused mainly on draft positions papers, reporting back from international meetings, and national implementation of agreements emanating from these.

DEA has more recently attempted to ensure that there is a focus to the NCCM meetings by developing an annual work programme, which the other departments have been invited to contribute to and to collaborate on. To illustrate the extent of the programme; the draft version for 2013 contains about 30 target activities that the NCCM is to discuss and follow up on. Most of these activities relate to implementation of Stockholm and Rotterdam conventions

(about 10 projects each). Many of the target activities are in themselves quite significant undertakings. The work programme also defines a time frame for each activity and which department that is supposed to lead the process and report on progress and completion.

The level and frequency of attendance at the NCCM meetings varies amongst departments. Certain officials told the team that they had refrained from participating for certain periods since they did not see its value to their work. Others said they had missed several meetings due to other duties. Another concern is that the officials actually attending might not always be the most relevant to issues discussed. In addition, it is noted that some key departments rarely attend.

### 6.3 Function and role of the MCCM

The aim of the MCCM is to provide input to, and inform the work of, the NCCM as well as to support improved multi-stakeholder implementation efforts. Originally, the MCCM met separately from the NCCM, with its meetings being scheduled directly after those of the NCCM. During the later part of 2010, this practice was changed and members of the two groups now meet together. The collapsing of the two structures was supported by most of the officials interviewed as they felt that the separate meetings were largely a duplication of time.<sup>13</sup>

If intra-governmental issues need to be discussed and resolved before being presented in a broader stakeholder forum, the team was advised that these are arranged through small pre-meetings sessions.

### 6.4 Overview of other co-ordinating bodies

Beside the broad gathering of role players at NCCM, several other forms of collaboration exist between departments. The South African National Profile (2002-2005) presents an overview of committees and co-ordinating mechanisms relating to chemical management in approximately 2005.<sup>14</sup> Even if it is now partly outdated as, for example it is known that there are other committees or groups such as those convened by the dti, the report indicates the width of co-ordination efforts in place –

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<sup>13</sup> Since the two forae have now merged this report will use the term N//NCCM from hereon.

<sup>14</sup> The document is undated.

MECHANISM	SECRETARIAT
<b>Committee for Environmentally Sound Management of Hazardous Materials</b>	DEA
<b>Cooperating Mechanism for Transport of Chemicals</b>	DOT
<b>Interdepartmental Advisory Committee for the Protection of Humans Against Poisonous Substances</b>	NDA
<b>Pesticide Control Service Industries Board</b>	NDA
<b>Ministerial Locust Policy Committee for Managing the Locust Problem</b>	DAFF
<b>AVCASA Standing Liaison Committee</b>	
<b>Advisory Council for Occupational Health and Safety (ACOHS)</b>	
<b>Interdepartmental OHS Meetings</b>	DOL
<b>Committee for Environmental Coordination (CEC)</b>	DEA
<b>Interdepartmental Disaster Management Center (IDMC)</b>	Dept. of provincial and local Government
<b>Ministers and MEC coordination committee (MINMEC)</b>	DEA
<b>National Economic Development and Labour Council</b>	DOL
<b>South African International Council of Science Secretariat (SA ISCU)</b>	NRF
<b>Strategic Approach to International Chemicals Management (SAICM)</b>	DEA

There are also several instances of bilateral co-operation between two departments. For instance, the Department of Health and Department of Agriculture, Forestry and Fisheries have frequent contact on the evaluation of pesticide dossiers, where the Department of Health provides input on health assessments. Much of these collaborations are about specific activities, such as DOL taking a lead on preparing national activities for the “Global Lead Awareness Week” in October this year.

Another significant on-going co-ordination effort is the implementation of the Global Harmonized System (GHS) in South Africa. This work is lead by the DOL and dti, with many active stakeholders. DOL is also coordinating the Project Steering Group (PSC) which is part of the Partnership Program between DOL and the Swedish Chemicals Agency (KemI). The PSC’s task is to oversee the activities based on five objectives: improved interdepartmental co-operation (which this report is a part of); knowledge increase of chemical control; proposing a national chemical register, and strengthening chemical management knowledge in general

## 7. Findings and observations

The discussion below provides an overview of the team's findings on the opportunities, strengths, challenges and barriers that emerge from the study.

### 7.1. The need for co-ordination

All officials interviewed agree that there is a need for co-ordinating the management of chemicals between government departments. Since agreement of such a need is an essential requirement for the successful operation of any co-ordinating mechanisms, the officials' views in this regard are considered to be a significant strength of the current situation.

### 7.2 Departmental capacity and operations

Although the team was not required to investigate the capacity and approaches within the departments, officials were asked several questions on these issues to assess whether any implications arose for interdepartmental co-ordination. In this regard, the investigation into departmental capacity and approaches to chemicals management revealed that –

- several departments have only a limited, and inadequate, number of posts dedicated to chemicals management which means that departments do not always discharge all of their functions fully;
- the experience of officials and their ranks vary across the departments;
- some departments experience high staff turnover;
- although there are a number of highly dedicated officials, they sometimes feel 'isolated' within their department in terms of substantive support and mentoring because their component is very small;
- in some instances there are difficulties in co-ordinating chemicals management internally and/ or ensuring that chemicals management is prioritised within the department;
- many of the departments do not have a formal feedback requirement regarding the work of the NCCM and its implications for the department;
- few of the departments have a documented strategy on their approach to chemicals management; and
- officials do not always understand what the roles and responsibilities of other departments are.

The constraints present within the institutional arrangements and approaches of the departments have implications for understanding what co-ordination is required and the potential for various mechanisms to be effective. Three examples can be used to illustrate the point.

**EXAMPLE 1: Development of a coherent interdepartmental strategy for chemicals management**

It has been explained in section 5 that effective co-ordination requires, amongst others, a clear understanding of what is to be co-ordinated. That understanding needs to be informed by all the relevant role-players understanding the roles and responsibilities of different departments and then deciding on priorities, approaches and mechanisms. If a department does not have its own strategy, the inputs of officials from that department are likely to be *ad hoc* and not comprehensive in respect of all aspects of the departmental function. This will in turn result in a potential deficiency in the comprehensiveness of the interdepartmental strategy. Such a situation will be exacerbated if there is a high turnover of staff or if there is not consistency of the official or officials who attend the interdepartmental meetings.

**EXAMPLE 2: Institutional memory and contribution to co-ordination efforts**

Constraints such as high staff turnover together with a lack of intradepartmental feedback mechanisms usually results in a loss of institutional memory. Where these situations arise, the replacement official will not have the background knowledge of the work that has been undertaken in, for example, the NCCM or of the agreements or obligations accepted by their department. The contribution of the department to inter-departmental co-ordination efforts is therefore highly likely to be minimal for a period of time. It will therefore have a direct and negative impact on the outputs of the co-ordinating mechanism in question and in extreme cases could undermine the credibility that officials have in the co-ordinating mechanism.

**EXAMPLE 3: Giving effect to commitments made in co-ordination meetings**

In some instances the outcome of co-ordination meetings may include agreements that departments undertake activities outside of the meetings. If commitment to the co-ordination is to be built and maintained, it is essential that departments honour those agreements. Constraints such as insufficient capacity and staff turnover which result in one or more departments not fulfilling their obligations will accordingly have a negative impact on the success of the co-ordinating mechanism.



### 7.3 Current focus of co-ordination

The discussion in section 6 shows that there are currently a number of efforts being undertaken to co-ordinate chemicals management in South Africa. Notwithstanding this, the responses elicited during the interview process indicate that none of the officials believe that these efforts are completely adequate and perceive the need for co-ordination to be improved.

A key reason for this relates to the lack of consensus regarding the purpose the NCCM. In this regard, it will be recalled that section 5 outlined the different purposes that co-ordination may be required for. During the interview process it became clear that, although all of the officials support the need for co-ordination, there are different expectations regarding the issues that co-ordination should be focused on. The types of activities that individual officials prioritise for co-ordination understandably stem from the responsibilities of the particular department in question; the specific function that the official interviewed plays in their department and the extent to which adequate capacity does or does not exist in the department.

In summary the range of matters which the officials believe should be included in the co-ordination framework are as follows –

- the development of national positions that can be used in international negotiations;
- approaches to the implementation of international commitments;
- the harmonisation of approaches to the implementation of national legislation;
- sharing of knowledge and ideas regarding approaches and activities being undertaken by different departments;
- bi-lateral co-operation on areas of overlapping or dependent mandates;
- identification of emerging issues and trends which should be addressed;
- the up-skilling of individual technical capacity; and
- networking so that the relevant counterparts in the different departments are known.

Very few of the officials identified the need to co-ordinate national law reform activities as a priority. This was surprising to the team as there are currently several law reform initiatives being undertaken, many of which require implementation by more than one department if regulatory areas are to be addressed as a whole.

All of these co-ordination needs are valid and have a place within a chemicals management co-ordination framework. Nevertheless, it appears that the full range of co-ordination expectations is currently not being met and has given rise to some frustration. As discussed further below, one reason why they are not being met is because the N/MCCM is the main focus for overarching co-ordination efforts and the team believes that it is too ambitious for all of these co-ordination needs to be met through the work of the N/MCCM, not least of all because the NCCM already has a very full agenda and only meets quarterly. The challenge is therefore to explore ways in which the co-ordination framework can be expanded so that the needs of all officials are met. This requires the consideration of additional / alternate mechanisms so that no one forum is overloaded, with the ensuing real risk that the efficacy of the forum is reduced and no officials' needs are met in the depth required.

## 7.4. Current co-ordination mechanisms

### 7.4.1 N/MCCM

The N/MCCM is playing a clear role in the co-ordination of chemicals management amongst national departments. It is the central formal mechanism for co-ordination between departments is the NCCM which now meets jointly with the MCCM and has become a natural location for dealing with a range of co-ordination issues. It is a strength that interviewees believe that the N/MCCM structure should be retained as the primary forum at which chemicals co-ordination should take place. Notwithstanding this, interviewees expressed a number of frustrations and/ or areas where they believed the N/MCCM could be improved.

The work programme of the N/MCCM is a key document for identifying co-ordination items, activities to be carried out to fulfil commitments made, the timeframe to do this, and also the responsible actors for executing the tasks. The team believes that the work programme is a very good basis for making priorities, dividing responsibilities and monitoring progress through indicators.

However, as noted in section 6, the scope of the N/MCCM is very far reaching, and the current work programme needs to be re-evaluated from an efficiency perspective, highlighting two aspects -

- Firstly, what seems to be lacking is a consideration of which items are necessary to bring to the N/MCCM, and which items could - or should - be dealt with through other co-ordination means or where preparatory work should be undertaken outside of the main N/MCCM meeting. In this regard, most officials expressed some frustration at attending meetings where the agenda included focus issues that were not aligned with their co-ordination priorities. For example, some officials did not want to be part of meetings that discussed international conventions, whereas others felt that international conventions should be the priority topic. In other words, the current situation in which all of the role-players participate all of the time has led to some role-player fatigue. The challenge is therefore to streamline the approach so that officials mainly participate in discussions or activities that are most relevant to them.
- Secondly, amongst those items that definitely belong to the N/MCCM agenda, there is a lack of priority setting where crucial items can be given higher priority and more attention. For these key issues, there is not enough clear responsibilities on individuals and role players to deliver reporting progress and reports

In addition, the problem that some departments do not participate consistently in N/MCCM is a concern. If the key role-players are not present for discussions on central issues, then the legitimacy of agreements that are made is jeopardized and the potential for follow through implementation activities is undermined. By adding other forms of more “tailor-made” collaboration groups (sub-committees, task forces, etc.), the degree of participation and active involvement is likely to increase. This aspect is discussed further in section 8.

As far as could be determined, there is very little formal and joint capacity building or knowledge sharing on approaches to chemicals management in general. The ToRs of the N/MCCM are also supposed to contribute to these aims. We believe that capacity

building/knowledge sharing is a key function, but that the quarterly N/MCCM meetings are not sufficient to handle this need.

In addition to these ‘tangible’ types of concerns or issues, there are a number of ‘soft’ issues which interviewees mentioned. Some of these related to personalities. For example, a couple of interviewees mentioned that the chair had been abrasive and ‘steam-rolled’ the process, or refused to entertain certain discussions which the interviewee felt were important, on the basis that there was a need to ensure the entire agenda was completed. After further enquiry, it appeared that this situation occurred at a particular meeting and that the person chairing does not always do so. At first glance this incident may seem to be insignificant. However, it needs to be borne in mind that effective participation in the N/MCCM depends on largely voluntary attendance and co-operation. Situations such as these, where officials feel strongly enough to raise the matter some time after the event, could have a significant negative impact on the effectiveness of the N/MCCM if they become frequent occurrences.

A further issue that the team detected is that most interviewees outside of DEA perceive the N/MCCM to be focused mainly on ‘serving the needs of DEA’. Several of these accordingly feel that they are required to support or do DEA’s work and that their departmental issues are not a priority or considered to be on the same footing. When questioned most of these officials acknowledged that DEA had invited them to provide input to the N/MCCM workplan and that that is an attempt to ensure that everyone’s needs are considered. Nevertheless, this situation raises two concerns that are barriers to the N/MCCM’s effectiveness. Firstly, many of the DEA issues relating to the implementation of international conventions are government and department wide issues. However, the perception has resulted in a diminished or absent ‘ownership’ on the part of some of the other departments in some instances. Secondly, the perceived hierarchy has created some frustration and even resentment.

The third soft issue that was observed is that new officials who participate in the N/MCCM meetings will inevitably feel a sense of discomfort until they are fully aware of the work and approach of the N/MCCM. It is not clear what mechanisms are in place, if any, to induct new officials.

The team is aware that DEA is making an effort to understand the needs of the departments. At the same time the team also believes that some officials may not feel comfortable to raise subtle soft issues such as these in formal meetings. Unless they are raised and addressed, they can be a silent barrier to the optimal functioning of the N/MCCM.

With regards to stakeholder participation, although the team did not have the opportunity to physically meet any external stakeholders, some observations can be drawn from interviews with government officials, and also from communication with some other stakeholders.

The establishment of a standing stakeholder dialogue forum is a commendable and important initiative. We were not, within the scope of this project, able to evaluate to what degree the multi-stakeholder dialogue has influenced the process of defining governmental negotiating positions and the way international agreements are implemented nationally. However, the recommendations given in section 8 for reforming the M/NCCM mechanism would create benefits for this part of co-ordination as well.

The participation of external stakeholders in the MCCM seems to gradually have diminished. Industry is still relatively well represented while civil society groups and academia struggle to attend more because of given their time, resource and staff constraints. Environmental and

health organisations were initially more active, but as in many countries, NGOs have de-prioritised chemicals management issues in favour of other issues, such as climate change. For both academia and NGOs, travel costs can also be an obstacle.

The multi-stakeholder dialogue also seems to suffer from the extensive scope of NCCM. Many issues become rather technical and detailed and only a small number of individuals have the full insight to take part in discussions on this level of detail. On the other hand, on some issues contributing comments and suggestions from external experts can be extremely valuable, and the MCCM should present a vehicle to support this.

#### **7.4.2. Other forms of co-ordination**

It was noted in the previous section that apart from the N/MCCM, several focused and formal committees/ task groups or informal bilateral forms of collaboration exist between departments. On the one hand this can be valuable as –

- only the relevant role-players need be involved;
- the activities can be focused; and
- in the case of bilateral interactions, it builds relationships between departments that need to co-operate on implementation activities – a form of co-ordination that is not suited to formal committee structures.

Nevertheless, there is a risk that some of the committees in place could duplicate the work of the N/MCCM and contribute to a fragmentation of co-ordination. For example, if the DOL's PSC were to become permanent and expanded it is possible that its role would overlap with that of the N/MCCM.

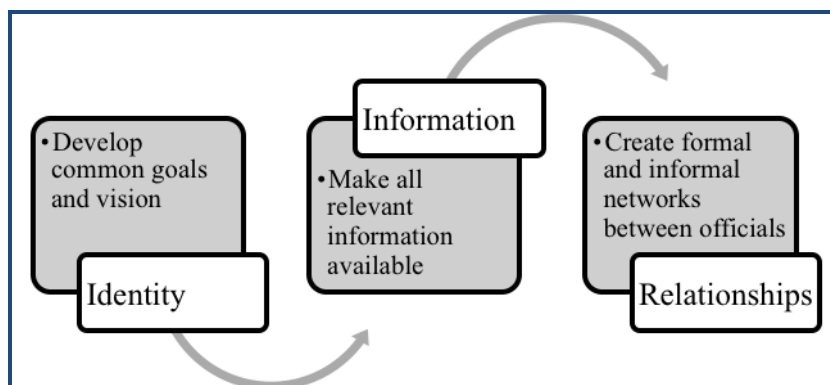
## 8. Recommendations

As noted in section 1, the team prepared a set of key recommendations for consideration by the departments at the workshop that was held in August 2013. The original recommendations are set out below for completeness. The responses of the departments to the recommendations are discussed in the next section.

### 8.1. Organising principles and tools for co-ordination

It was noted in section 7 that officials have different expectations and requirements in respect of co-ordination. In considering recommendations for addressing this situation, the team drew on the literature regarding self-organising systems.<sup>15</sup> In the fragmented institutional context of South Africa co-ordination cannot be legally or practically achieved through the imposition of fixed hierarchies and rigid rules. Nevertheless, the officials responsible for chemicals management in the different departments effectively constitute a virtual organisation for chemicals management. This is because, despite their separate locations, they are all part of one national chemicals management programme. The literature on self-organising systems can therefore be a useful point of departure for considering approaches to the interdepartmental co-ordination of chemicals management because it is based on the premise that organisations (in this case a virtual one) can be effective where strong hierarchical structures are not in place. The rationale for this premise is that all life is naturally geared towards ordering itself and more success will be achieved when self-organisation is allowed. Instead of hierarchies, proponents of self-organising systems argue that three interrelated conditions must be present. These are identity, information and relationships.

The diagramme below shows the key principles on which self-organising systems are based.



<sup>15</sup> See, for example, Wheatley, MJ and Kellner-Rogers, M *The Irresistible Future of Organizing* (July/ August 1996) [available at [www.margaretwheatley.com](http://www.margaretwheatley.com)] and Bryant, I *Self-Organizing Systems and Their Properties: Implications for Educational Leadership* (July 2001) [available at <http://cehs.unl.edu>].

It is recommended that the current co-ordination framework be expanded so that the needs of all officials can be met by adopting additional or alternate mechanisms. It is also recommended that the three components set out in the diagramme above be factored into the expanded co-ordination framework. Without purporting to be comprehensive, the subsections below propose additional recommendations for creating this framework.

In addition, it is noted that effective chemicals co-ordination needs be underpinned by strong political will. To the extent that such will is not present, it is recommended at options be explored for enhancing and or facilitating chemicals management at a political level.

#### **8.1.1. Development of common goals and vision (identity)**

The discussion above has indicated the extent to which chemicals management responsibilities are fragmented across a range of departments. It also shows that most of these departments have only a limited number of officials fulfilling the chemicals management function of the department and experience significant capacity deficits. In addition, it appears that chemicals management responsibilities are often not a high profile function or priority in many of the departments. In some instances, the chemical function is also peripheral to the core work of the department.

The team believes that this has resulted in the lack of a strong chemicals regulatory authority identity. There are two aspects to this ‘identity’. The first is ensuring that all officials involved in chemicals management have a clear understanding and acceptance of the common vision, objectives and values of the virtual chemicals management organisation. The second aspect, which is related to the first, is that the officials can identify (or feel a relationship) with the virtual organisation that is made up of the officials in different departments. (This aspect is discussed further in section 8.1.3).

It is therefore recommended that different departments collaborate in developing a cohesive chemicals management strategy for the country so that the officials understand what the common objectives are and how they should be contributing to realising those objectives.

#### **8.1.2. Accessibility to information**

A few of the needs for co-ordination relate to access to information. This means that information needs to flow freely throughout the chemicals management regulatory network. It is suggested that one way in which this could be achieved is the development of a chemicals regulatory authorities’ website. The website could serve multiple purposes. For example, it could be populated with co-ordination-related documents such as an explanation of how co-ordination takes place and minutes of the N/MCCM. This would have the benefit of creating a repository for institutional memory and assist newly appointed officials to understand the context of chemicals management. In addition the website could be used to -

- build a chemicals regulatory authorities identity;
- facilitate interdepartmental communication by posting a current list of the names and contact details of relevant officials in the departments;
- provide access to information on the programmes and activities of the different departments;
- provide updates on activities in between N/MCCM meetings;

- facilitate skills development and interdepartmental co-ordination by creating a blog capability which can be used to ask for advice or assistance or to debate certain issues; and
- enhance officials' knowledge by providing a range of resource documents.

In addition to this, it is important that officials have the opportunity to interact with each other on an informal basis so that information can be obtained or given on an *ad hoc basis*.

### 8.1.3. Creation of formal and informal networks

Section 8.1.1 indicated that officials need to feel connected to the virtual chemicals management organisation. In order to achieve this, it is recommended that consideration be given to developing a more cohesive virtual identity across the departments. It was not possible to identify the full range of activities that would be required to achieve this within the scope of the project. However, in addition to some of the recommendations that are made below that can contribute enhancing the virtual identity, examples can also be considered from other areas where co-ordination is required across departments. For example, environmental management inspectors (EMIs) are located in departments at all three spheres of government. It appears that there is a relatively strong sense of community amongst the EMIs which has been created through strategies such as the use of terms like 'the EMI network' and 'green scorpions'; the issuing of standard uniforms to all EMIs and co-ordinated national training.

A further means of achieving both this, as well as access to information and capacity building, could be addressed through the holding of annual or biannual multi-day legotlas. These sessions could meet a variety of co-ordination needs if they are used for updating the skills of officials and developing strategic approaches to new or key issues. In addition, if they are a multi-day event, they will also facilitate networking and the building of relationships between officials in different departments.

Finally, consideration should be given to 'inducting' new officials so that they are orientated into the approach of the co-ordination framework.

## 8.2. Redefining the role of the N/MCCM

It is recommended that the NCCM be retained as the primary co-ordination committee for chemicals management and that the establishment of additional (new) structures be avoided, or reduced. In this regard, it is recommended that an 'audit' be undertaken of other committees that are currently being used to assess whether there are any unnecessary overlaps.

Notwithstanding this, there are also some suggestions regarding refinements to the current operations of the N/MCCM that can be made to optimise its efficiency.

Firstly it is recommended that the vision and objectives of the N/MCCM be revisited in a workshop so that all stakeholders are clear on the ultimate vision and objectives that are adopted. Doing this will assist in alleviating some of the differences in understandings and expectations that currently exist.

Secondly, whilst it is noted that the work programme is a very good basis for making priorities, dividing responsibilities and monitoring progress through indicators, it is

recommended that the current work programme be re-evaluated from an efficiency perspective to address the following i.e. -

- whether the programme can be streamlined and reduced or focused;
- whether all the items need to be dealt with by means of multi-lateral co-ordination or if some are more appropriate for bi-lateral, or more limited, co-ordination;
- stronger emphasis being placed on priority setting, where crucial items are given higher priority and more attention. For these key issues, there needs to be more clear responsibilities on individuals and role players to deliver reporting progress and reports.

In addition to these recommendations, consideration should be given to establishing smaller working groups for key issues which report to the main N/MCCM committee. Provision for such working groups or specialist working groups is already made in the N/MCCM ToRs. If a system of working groups is implemented, it would provide for focused discussion and 'work' on particular issues and could have several benefits, including more in-depth attention being paid to particular issues and officials who are not involved in a topic not having to participate at length in areas that they are not relevant to them. For example, one group could focus on law reform and another on the Rotterdam and Stockholm conventions and another on implementation of the GHS.

Consideration could be given to giving the N/MCCM statutory status. Whilst this could increase the profile of the committee it will not in itself ensure the success of the committee as a co-ordination mechanism. This fact is illustrated by a range of statutory committees in other areas that have not succeeded.

### 8.3. Bi-lateral interactions and networking

Even with the N/MCCM system reformed and part of the work delegated to subgroups, there exists - and should be encouraged - bi-lateral interactions between departments. These are natural elements of a self-organizing structure as explained above. In many cases there is no need for a formal structure, but rather an informal network mechanism. It would be useful, however, if the existence and results of these bilateral collaborations is clearly communicated to the rest of the 'governmental network'. This could as minimum involve identifying these processes on the common website, but it could also take the advantage of getting other's input in different ways. By publishing intentions and results, the risk of duplicating work within the government is also reduced.

### 8.4. Building the capacity of the chemicals regulatory authorities

Chemicals co-ordination mechanisms can neither dictate nor address the institutional arrangements of individual departments. Notwithstanding this, for the purposes of understanding what capacity is required to build an adequate chemicals management regulatory capability in the country, it is recommended that a detailed organisational development study be undertaken which –

- maps the role-players and their responsibilities including a review of already completed similar studies within each department; and



- identifies the skills and numbers of officials that are required to discharge those responsibilities.

## 8.5. Vertical co-ordination

It was noted in the beginning of this report that the study did not assess how co-ordination takes place between the three spheres of government or to what extent it is effective. It was also noted that the provincial and local spheres of government has certain important responsibilities in respect of chemicals management. It is accordingly recommended that in the future, an assessment be undertaken (possibly by the N/MCCM) in terms of which –

- the way in which the departments do, or do not, co-ordinate with other spheres of government is understood;
- existing gaps are identified; and
- measures be implemented to address any current gaps.

### SUMMARY OF RECOMMENDATIONS

- 1. Develop a cohesive and consensual chemicals strategy**
- 2. Build or enhance chemicals regulatory authorities virtual identity**
- 3. Increase accessibility of information through, for example, development of a website**
- 4. Improve networking and capacity through holding of annual or biannual *legotlas***
- 5. Reach consensus on the role of the N/MCCM**
- 6. Restructure and refine the operation of the N/MCCM**
- 7. Undertake a number of joint interdepartmental activities, for example, inspections**
- 8. Conduct organisational development study on departmental capacity needs**
- 9. Assess efficacy of mechanisms for vertical co-ordination**

## 9. Summary of workshop proceedings

The workshop which was held on 14 August 2013 was attended by representatives from DOL, dti, DEA, the Department of Health (DoH) and the Department of Agriculture, Forestry and Fisheries (DAFF) as well as KEMI and the Orgut team. (A full list of participants is attached as Annexure A). The workshop was lead by the team from ORGUT that had produced the report.

### 9.1 Discussion and agreements reached

The workshop began with an explanation by KemI of their interest in chemicals management and a presentation by the consultants of their findings from interviews and their nine recommendations listed above. The presentations were followed by focused discussions on the recommendations. The main comments, agreements and conclusions are summarised below.

#### **On the scope and role of chemical management co-ordination in general:**

All participants agreed that interdepartmental co-ordination of chemicals management is essential and believed that all the various types of co-ordination suggested by the team needed to be addressed, although not necessarily by only one method. In addition, many of the participants agreed that chemicals management is viewed as a ‘cinderella’ issue in many departments and that if co-ordination and implementation efforts are to be optimally effective, the need for chemicals management – across departments - needs to be drawn to the attention of the relevant Ministers with the view of obtaining political support for chemical management related activities. Other general points on approaches to co-ordination included the following -

- in deciding what needs to be co-ordinated, the NCCM should clearly define which chemicals are included in the scope of co-ordination processes and which are not. (For example, pharmaceutical substances are normally not included in the scope and there may be other ‘border line’ groups).
- participants also felt that role players and their respective roles should be clearly documented. Some departments that are members of the NCCM have very limited role in chemicals management. Can we really expect them to participating fully in the operations?
- as the scope and roles of chemicals management is defined in the legislation, it was felt that legislation should be used as the logical starting point for defining role players’ mandate and the degree to which they need to be involved.

#### **On the need for a strategy:**

All participants agreed that a chemicals management strategy should be developed for the management of chemicals in the country. The group felt that the scope of work that will be involved in developing the strategy justified the formation of a dedicated NCCM working

group. Some members noted that there are a range of existing documents that could be considered and drawn on by the working group. These include, for example, the GHS strategy that was produced by NEDLAC and the SAICM agreement.

### **On NCCM operations:**

Participants recognised that DEA has made concerted efforts to make the NCCM agenda more inclusive and to involve representatives from the different key departments. It was, however, generally accepted that the workplan of the NCCM is very ambitious. Although most of the agenda items were considered to be necessary, the group agreed with the team's findings that this sometimes makes the NCCM meetings superficial in the level of discussion that can be achieved and that not all agenda items are relevant to all members. Much of the discussion therefore focused on exploring ways to streamline and improve the current approach. In this regard the following points and agreements were noted -

- The NCCM's role and work needs to be 'advertised clearly', to make it attractive for people to participate more actively.
- A form of induction (perhaps through making relevant documentation available) should be instituted for new representatives.
- The ToR of the NCCM allows for creation of workgroups (or 'task forces') to carry out defined tasks. It was felt that the establishment of working groups would allow for properly focused discussion, in the depth that is often required but is presently lacking. An additional benefit would be that role-players not affected a particular topic need not have to participate in detailed discussions on the topic. In this way much of the work addressed by the NCCM could be dealt with in depth by working groups which report their findings and recommendations to the NCCM 'plenary'. In order to identify relevant working groups, the current NCCM activities (as defined by the annual work plan) need to be scrutinised.
- There needs to be a sufficiently resourced secretariat to prepare for, and follow up on NCCM meetings. Whilst participants agreed that the secretariat should be permanently placed at DEA, it was noted that the practicing of rotating secretariat functions between officials in DEA on a quarterly basis is an obstacle to ensuring continuity and sustainable operations of the NCCM.
- NCCM has no decision making power which makes ensuring follow through on commitments a challenge in some instances. It was felt that the best way of addressing this was through creating accountability within the context of a team. In addition, an allocation for co-ordination related activities needs to be reflected in departmental business plans and officials key performance areas (KPIs). The prioritisation of chemicals management within departments would also allow members to deliver more effectively where they are currently facing resource constraints.
- There needs to be some sort of filter to what goes into the NCCM annual workplan. At present, the plan is developed on an inclusive, but non-strategic basis. The workplan should relate to the overall chemicals management strategy.
- A system for reviewing the effectiveness and/ or impact of the work of the NCCM should be put in place through, for example, the use of indicators. Such a process will

allow for both publicising the successes of the NCCM and identifying areas that need refining.

### **On creating a website:**

There was wide support for the development of a website as proposed by the team, although there was also concern regarding which institution would have the capacity to host and administer the site. (If was agreed to refer the question of ownership of the website to the NCCM for discussion.

- The website would need to be user-friendly and updated frequently as if people don't get what they expect when they access the site, they will not return to it again.
- The potential for providing an inter-departmental blog service should be explored in terms of which officials could ask questions, share experiences and get in contact with colleagues in other departments that work on a similar issue. This will encourage pragmatic one-to-one collaboration in-between departments and assist in the creation of a virtual identity.
- A potential challenge that will need to be explore is governmental policy regarding website development.
- It was agreed that the website would be for inter-departmental use and not for public access. (The concept of providing accessible chemicals regulatory information requirements to the public could be explored in another form, although the dti noted that their experience in this regard was not very successful because of the demands of administering such a site).
- There are technical web-based services, such as Projectplace ([www.projectplace.com](http://www.projectplace.com)) and Basecamp ([www.basecamp.com](http://www.basecamp.com)) that might be utilized as a template. The PSC is already using the Projectplace tool, since that is a tool commonly utilised by KemI. KemI offered to make ProjectPlace available for piloting purposes until the end of 2013.

### **On Legotlas:**

- There could be such a meeting say every 2 years. The purpose could be to evaluate and update strategies, bring people in for training/updates, and to hold discussions regarding, for example, how to conduct inspections, expert panel sessions, shared experiences etc.
- One suggestion that was made is to have the legotla as the last NCCM meeting of the year. NCCM may decide to have a group develop a proposal for how a Legotlas can be arranged.

### **On assessing the efficiency of vertical co-ordination mechanisms:**

It was agreed that the efficiency of vertical co-ordination mechanisms must be researched.

**On pilot projects/ joint projects:**

It was agreed that pilot projects should be considered. A possible option was the implementation of GHS which could also be an NCCM working group.

**On conducting organisational development study on departmental capacity needs:**

Several departments supported this recommendation, although the need was clearly more evident in some departments than others. Some pointed out that this had been done in certain departments and that existing work should be drawn on.

## 9.2 Prioritisation

At the end of the workshop, participants, including KemI were asked to prioritise three to four activities from the list of nine recommendations in the report i.e. -

1. Develop a cohesive and consensual chemicals strategy
2. Build or enhance chemicals regulatory authorities virtual identity
3. Increase accessibility of information through, for example, development of a website
4. Improve networking and capacity through holding of annual or biannual *legotlas*
5. Reach consensus on the role of the N/MCCM
6. Restructure and refine the operation of the N/MCCM
7. Undertake a number of joint interdepartmental activities, for example, inspections
8. Conduct organisational development study on departmental capacity needs
9. Assess efficacy of mechanisms for vertical co-ordination

The aim of the process was to get a sense of which recommendations should be actioned first and not to rule out the implementation of all points that had been agreed to.

This process resulted in the following preliminary score card -

Activity	DEA	DoH	DOL	dti	DAFF	KEMI
1 (strategy)	1 <sup>st</sup>	2 <sup>nd</sup>			1 <sup>st</sup>	1 <sup>st</sup>
2 (identity)			2 <sup>nd</sup>	4 <sup>th</sup>		
3 (info access)	4 <sup>th</sup>	3 <sup>rd</sup>	3 <sup>rd</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>	
4 (net-working)						
5 (role of NCCM)	2 <sup>nd</sup>			1 <sup>st</sup>		
6 (NCCM operations)	3 <sup>rd</sup>		1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>
7 (joint activities)			4 <sup>th</sup>		4 <sup>th</sup>	3 <sup>rd</sup>
8 (study on cap.)		1 <sup>st</sup>				
9 (assess vertical co.)		4 <sup>th</sup>				

The ranking shows quite a high degree of synergy in three areas i.e. -

- There is a strong and widely shared ambition to develop a cohesive and consensual chemical (management) strategy (item 1).
- Restructuring the NCCM to make it more operational through working groups is considered to be important.
- Enhancing inter-departmental information exchange (item 3) is regarded as being important, and setting up a web site service for this has much support.
- In addition it is noted that -Item 5 (reaching consensus on the role of NCCM) was rated as important, except for dti. This probably does not reflect a lack of recognition of the importance of the point so much as a sense that the NCCM already has a clear role.
- Variations of priority setting of item 8 (capacity assessment) probably reflect the actual resource situation in departments. For example, DOH has two officials to undertake a number of responsibilities whereas other departments feel that current resourcing are sufficient.

It must be stressed that the prioritisation was a preliminary discussion and requires further work. In this regard, the preliminary prioritisation appears to reflect the initial responses of representatives based on their own departmental experiences. By way of illustration, participants were asked to give a short motivation for their choices. These were as follows -

- **DEA:** it's important to clarify the rules of the NCCM and to avoid duplication of work. Therefore, agreeing on a cohesive chemicals strategy is key, and also clarifying roles in relation to the NCCM.
- **DOH:** The lack of capacity is a major problem. A study to address needs would be very useful to secure implementation of the chemical strategy. With regards to vertical integration, good practices and achievements in provinces and local government should be communicated more widely.
- **DOL:** the role of NCCM is already clear through previous work. What is needed is to optimise the way NCCM is working. Departments should also strive to set up a common website. Resourcing is not really a problem for the DOL – the issue is rather how to manage the resources efficiently and prioritise.
- **dti:** it is also important to direct communication upwards and to secure commitment at the political level.
- **DAFF** sense that a common strategy is needed to guide and direct work.
- **KEMI:** Strategy needed: Long-term objective should be the mainstreaming of chemicals legislation. Also, a well-resourced secretariat to support the NCCM operation is crucial.

### 9.3 Way forward

As a way forward, it was agreed that –

- the DOL will take on the responsibility for presenting the outcome of the project to the NCCM;
- The NCCM will make decisions regarding how the recommendations that were agreed to by the departments should be implemented and which departments will be responsible for the different activities.

- The PSC which is convened by the DOL and which oversaw this project will be absorbed into the NCCM.

## Annexure A: Workshop attendees

Name	Department/ Organisation
J Hall	Orgut
P Rosander	Orgut
J Bagheer	Orgut
A Fransson	KemI
L Torngvist	KemI
J Forsberg	KemI
M Ruiters	DOL
E Lourens	DOL
N Somngesi	DOL
M Mloi	DEA
F Masekwanmeng	DOH
D Hadebe	Dti
A Lotter	dti
T Nepfumbada	DAFF
T Sebego	DEA