TO:	Ministry for the Environment
SUBMISSION ON:	Hazardous substances assessment: improving decision-making
NAME:	Nikki Johnson, CEO, NZ Kiwifruit Growers Inc (NZKGI)
ADDRESS:	PO Box 4246, Mount Maunganui South 3149

1. Summary

The NZ kiwifruit industry supports the important role of the EPA in regulating agrichemicals in New Zealand. While we support the EPA streamlining its processes to become more efficient, we consider many of the proposed changes would remove natural justice from these processes, taking away from the rights of industry, growers and manufacturers. We encourage MfE to consider how EPA can use the existing reassessment process to achieve its aims of increased efficiency and better societal and economic outputs.

2. Background to NZKGI

NZKGI was formed in 1993 to give kiwifruit growers their own organisation to develop a secure and stable kiwifruit industry. NZKGI represents 2,800 kiwifruit growers and gives growers their voice in industry and government decision making. NZKGI works to advocate, protect and enhance the commercial and political interests of New Zealand kiwifruit growers.

3. The kiwifruit industry in New Zealand

The kiwifruit industry is a major contributor to regional New Zealand returning $1.8 billion directly to rural communities in 2018/19. There are 2,800 growers with 14,000ha of orchards with 7,700ha green and 6,300ha gold. The industry has 10,000 permanent employees and up to 25,000 jobs during the peak season. Approximately 80 percent of New Zealand's kiwifruit crop is grown in the Bay of Plenty.

Zespri is a New Zealand company owned by New Zealand kiwifruit growers which exports and markets the world's leading portfolio of kiwifruit 12 months of the year, as well as implementing a world-leading R&D programme. Orchards and postharvest are independently owned and managed. Zespri sets the grade standards for fruit as well as the allowed agrichemicals and use patterns.

Proposal 1: More direct reliance on overseas regulators' assessments

NZKGI supports the principle of EPA being able to make use of other jurisdictions' data to expediate regulatory processes. However, we only support *Option 2A: Apply overseas data, scientific information and assessments in part*.

We do not believe options 2B and 2C are appropriate and consider that the EPA should always assess information from overseas regulators in the New Zealand context, particularly as

overseas regulators may **not** be required to consider the same aspects as the EPA, for example, economic impact.

We do not believe the criteria outlined in Section 2.1 provides sufficient detail on how a trusted regulator would be selected and ask that MfE consult further with industry on this aspect along with how the EPA will use the data in its decision-making in an NZ context. For example, following the advice of the European regulator on glyphosate would conflict with New Zealand's risk-based model and its own science-based position.

Consideration also needs to be given to what EPA would do with conflicting decisions from two trusted regulators. In the case of the kiwifruit industry, there is conflicting technical information on HiCane from EFSA and USDA.

We also note there would be relationship risks in nominating some regulators as trusted over others and that valid scientific reports from non-trusted regulators may be disregarded unnecessary.

Proposal 2: Immediate suspension based on trusted information

In the recent case of the successful application for grounds for reassessment of HiCane by a member of the public, if the EPA had taken the EFSA report as grounds for immediate suspension as a trusted regulator, the NZ kiwifruit industry would have had one of its essential economic tools taken away. There would have been no consideration on the significant economic consequences of its removal and the use of the product in a New Zealand context. This goes against the principles of natural justice where ill-founded decisions could have massive consequences to growers and the New Zealand economy.

NZKGI would be interested to learn where there have been circumstances where the EPA felt suspension of a substance was necessary but was unable to meet the criteria under Section 64. Given the potential impact of such a suspension, NZKGI considers that the current criteria under Section 64 are appropriate. We do not agree with the statement that Option 1 does not allow the EPA to respond to risks because Section 64 is there for that purpose.

NZKGI does not support Option 2. If the EPA receives information from a trusted regulator with concerns about an approved compound, there needs to be formally notified review process where this information is considered in a New Zealand context along with targeted public consultation.

Proposal 3: Hazard classification changes based on a trusted regulator's decision

NZKGI supports Agcarm's submission on this Proposal, where before adopting a new classification from a trusted regulator, the EPA should:

- Consider whether new information is available which was not considered as part of the primary assessment which would challenge the current classification.
- If yes then call for a targeted reassessment to consider the new information with notification and a public submission process.
- If no then consider if the classification used by the regulator follows the same principles as NZ. If yes then complete an internal review and call for reassessment if needed.

Taking this into account, we support *Option 3: Adopting a trusted regulator's decision following a controls updating process.* We note that the workability of this proposal hinges on how the EPA adopts the Global Harmonisation System of Hazard Classifications and ask the EPA to provide details about how it proposes to do this.

Proposal 4: Making call for information statutory and revoking approvals if no information is forthcoming

NZKGI does not support this proposal. We consider that manufacturers on the whole already do their best to comply with EPA's call for information requirements. Where a company does not provide information to EPA, it is their loss.

We also note that grower organisations generally support the call for information process indicating that a product is important to the end-user. Information from registrants may not be submitted in support because the return on investment for the registrant is not sufficient. This is particularly the case if data protection is not provided or where non-submitting companies can continue to sell the product even though they have not invested in the regulatory process.

As New Zealand is such an insignificant market for agrichemicals, it will be the grower who is impacted by the reassessment process. EPA must work with those parties which have expressed support for the product to get the information needed for the reassessment.

With respect to reassessments initiated externally, we suggest EPA does not accept the application until all of the information required is provided. We question why EPA would accept the burden of proof and cost in these circumstances. This does not require a change to the HSNO Act.

We have had feedback EPA can be unclear in the information it requests and this information can be complex and time consuming to pull together. We suggest EPA changes its process to request information to fill specific data gaps to address identified risks rather than request a huge amount of information at the start of the process.

Proposal 5: Targeted consultation for modified reassessments

Where an applicant is wanting to change controls to a registered compound, NZKGI agrees these should be considered variations to the current approval and a targeted consultation is more appropriate than a full public hearing.

We note however that it may be difficult to determine the appropriate stakeholders for each reassessment and EPA would need to work closely with industry to ensure this process is robust. We question whether targeted consultation would in fact result in a less intensive process. A review of the current engagement would be useful to understand this better. In recent reassessments, where does the EPA consider that a smaller group of people would have engaged in the process if it had been targeted?

We disagree that a modified reassessment is as time consuming as a full reassessment because the scope of the information that needs to be gathered and assessed is very different. Modified reassessments are limited to the scope that is defined by the grounds for reassessment process. If grounds have been granted on a limited scope of information, this is a significantly lower workload than a full reassessment would require. If changes are made to controls which better protect users and further minimise impacts to the environment, we would query whether this would need a reassessment.

Proposal 6: Duplication when reassessing Priority Chemical List approvals

NZKGI supports *Option B: Adding inclusion on the PCL to the section of the Act relating to grounds for reassessment to make it clearer to decision-makers that compounds on the list should be considered to have grounds for reassessment*.

However, our support for this option is contingent that there is some communication on the justification for inclusion of products on the PCL. We see no issue with the EPA grouping

compounds in this consultation, but we do not support a process where the EPA has the power to determine the grounds and pathway for reassessment without any justification. We consider that consultation with industry partners on the PCL should be a requirement.

For any option we would request MfE to provide a calendar or timeframe for reassessments to industry to enable them to manage impending risks and prepare information.

Inclusion on the PCL is also likely to be taken as a signal by growers that alternatives should be considered as a matter of priority. If these signals are made with enough lead-time this may mean that growers no longer need to support the continued registration of the product on the PCL. This achieves the outcome of moving to safer alternatives.

Proposal 7: Avoiding duplication when assessing new and existing approvals

We consider the EPA should have mechanisms to ensure the outcomes of a reassessment are directly transferable to all substances that fit under the scope of the reassessment. A more efficient way of doing this would be to add a condition in the approval to say that controls and conditions can be updated following a reassessment. We note and support the comments in the Agcarm submission on this issue and recommend further discussion with industry take place.

Proposal 8: Updating controls of existing substances

While there is the potential for this to make it easier for manufacturers to introduce new substances, there are consequences. We note and support the comments in the Agcarm submission on this issue and recommend further discussion with industry take place.

4. Further discussion

This submission is made by NZKGI on behalf of the wider kiwifruit industry. NZKGI welcomes further discussion with MfE on mechanisms to improve decision making for hazardous substances assessment.