

This newsletter from WorkSafe New Zealand aims to support test certifiers by providing information, guidance and updates on hazardous substances and test certification.

All test certifier updates are also available to other interested parties on the WorkSafe New Zealand website: www.worksafe.govt.nz

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COMMUNICATIONS AND DATES FOR TEST CERTIFIERS IN 2017

With the continuing Hazardous Substance and New Organisms (HSNO) Act reforms, and the Health and Safety at Work (Hazardous Substances) Regulations due to come into effect at the end of the year, we want to keep you up-to-date with developments regarding the transition to the new legislation. Here are some key dates to enter into your diaries (please note these dates may change depending on when the regulations are made):

RELEASE OF THE HEALTH AND SAFETY AT WORK (HAZARDOUS SUBSTANCES) REGULATIONS

- > April: Hazardous substances regulations finalised

- > December: Hazardous substances regulations come into effect

WORKSAFE TRAINING

Workshops on new hazardous substances regulations:

- > June and July: in Auckland, Wellington, Christchurch
- > Attendance highly recommended
- > Workshops will cover differences between HSNO and HSWA legislation including: fit and proper, audit process, performance standards, applications process, and compliance certifier site visits

Workshop for issuing location compliance certificates for classes 6 and 8 hazardous substances:

- > After the regulations are made, to be held in Wellington
- > Applications processed by early December

PERFORMANCE STANDARDS

- > Reference group workshops with test certifiers to develop the standards will continue throughout 2017

APPLICATION FORMS, USER GUIDES AND CERTIFICATE REGISTER

- > February: New compliance certifier register – survey
- > March: New compliance certificate register/database – survey
- > November: New forms for applications and user guide

COMPLIANCE CERTIFIER APPROVALS

- > November: End of processing test certifier applications (renewal or new) under HSNO legislation

- > December: Commencement of processing compliance certifier applications under hazardous substances regulations
- > December: Applications in progress or submitted will be transferred over to HSWA
- > All compliance certifiers will be issued with new approval certificates and documents, to match new legislation (limitations and conditions to match existing) – within two months of new regulations coming into force
- > Categories, limitations and conditions for the types of approvals will be standardised

COMPLIANCE CERTIFICATES

- > November: Your forms, templates and other certification material will need to be updated to reflect the changes in the new hazardous substances regulations. We will give you some information to help with these changes

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WORKSAFE PROJECTS FOR NEW REGULATIONS

There are a lot of changes for test (compliance) certifiers this year, as you can see from the list above.

Based on the draft regulations there will be changes to:

- > the regulations relating to test certifiers, such as the new name ‘compliance certifiers’
- > the regulations relating to test certificates, with new wording on compliance certificates
- > the test certifier register
- > the test certificate register
- > location certificates for some class 6 and 8 substances

- > threshold quantities that trigger various compliance requirements
- > site visit requirements
- > the audit process.

We are working on a huge range of new application forms and a user guide for compliance certifiers, as well as new application forms for equipment approvals (eg burners, compliance plans, vapourisers). There are new policy documents and standard operating procedures for dealing with compliance certifier applications, and new categories for compliance certifier approvals.

We will provide you with information about how the new regulations and the current legislation will work together. This will allow compliance certificates to be issued under the new regulations.

At the same time, it is business as usual for test certifier renewal applications, new

applicants and those seeking extensions to their approvals – and answering the queries you need answered. This is a period of great change for all of us involved in hazardous substances regulatory work.

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INVITED ARTICLE FROM HSPNZ

Below is an invited article, written by Rex Alexander from the Hazardous Substances Professionals (NZ) Inc. (HSPNZ):

Following on from WorkSafe's test certifiers' training workshops in May, and as a result of a survey of test certifiers – the decision was made to establish a new professional organisation to represent test certifiers. Based on the transfer of the regulations to the Health and Safety at Work Act 2015 will become 'compliance certifiers'.

The inaugural meeting of the organisation Hazardous Substances Professionals (NZ) Inc was held on Wednesday 9 November. There were 31 test certifiers representing a range of disciplines and approvals in attendance. Of the 17 apologies received, the majority expressed considerable support, their best wishes and enthusiasm for the purpose, aims and goals outlined in the draft rules as previously distributed.

Elected were a president, secretary, and treasurer, two highly regarded technical managers, a very experienced education manager, a media manager, plus four test certifiers as regional chairpersons and a number of other enthusiastic committee members.

The elected management committee is now working to establish the organisation as an

incorporated society. The committee has developed a formal constitution which is close to being lodged with the Companies Office. Membership can be opened once the companies office has processed the application. A separate code of ethics including a disciplinary process was considered by the meeting to be desirable and will be completed.

The structure agreed is required to meet the alignment requirements of membership of the Health and Safety Association of NZ (HASANZ), an organisation supported by WorkSafe and representing member organisations at government level within the general health and safety space.

On completion of the formal establishment of the organisation there will be a recruitment drive to build membership with the aim of achieving universal coverage and therefore an authoritative voice for our profession. An annual fee of \$350 was identified by the committee for the category of professional membership and open only to test certifiers. As the organisation's name suggests there remains room for other types of membership such as associate and corporate.

The benefits of membership include from the outset, a consolidated and representative response to calls for submissions on legislative changes, safe work instruments, industry codes of practice, and test certifier performance standards against which test certifiers will be audited.

Much emphasis was put on the spirit of cooperation among members by speakers, from the floor and from the Chair, which augurs well for the organisation to become involved in training and support of certifiers at time of approval renewals and during disciplinary processes. The intent is to establish protocols and processes around continuing professional development to meet the expectation that we raise our standards and promote consistency. This work is progressing quickly.

An annual conference is planned with regular regional meetings in Auckland, Central North Island, Wellington and the South Island, chaired by the elected regional chairpersons. The first regional meetings are planned for early March in Auckland, Cambridge, Wellington and Christchurch,

and are open to all test certifiers. Contact Robert Lee (email: sec@hspnz.co.nz) to register your interest in attending.

There will be regular newsletters, a website with a member's-only section, and a moderated online forum to discuss legislative interpretations. The outcome of the latter can then be put as a consensus view to WorkSafe for a ruling and incorporation as a body of knowledge into a member's-only database.

The Executive Committee wishes to thank Mike Nankivell for taking the initiative, making his time available and for being the driving force behind establishing our new organisation.

I am sure all member attendees at the meeting will join in thanking Adrian Straayer, Manager of the WorkSafe Compliance, Approvals, and Registrations team, for all his assistance, providing the catering and for his guidance in making the event the success it was; Kate Studd, newly appointed to the team, for the numerous conversations and her support; and to Karen Chaney of HASANZ for the briefing on her organisation.

The Executive Committee comprises:

- > President - Jack Travis
- > Secretary - Rob Lee (who at this point has also agreed to coordinate the first regional meeting until we co-op someone)
- > Treasurer - Tash McKinnon
- > Education Manager - Leigh-Anne Peake
- > Regional Chairperson Auckland - Aaron Donald
- > Regional Chairperson Central - Rob Lee
- > Regional Chairperson Wellington - Pete Roche
- > Regional Chairperson South Island - Peter Menzies
- > Technical Managers - Mike Nankivell/ Aaron Lelean
- > Media Manager - Rex Alexander
- > Committee members - Mike Haley/ John Downey/Kyle Nankivell

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NEW HAZARDOUS SUBSTANCES REGULATIONS

Previously we announced that the hazardous substances regulations would be launched late March/early April (at the earliest), approved by Cabinet and then would come into effect in early December. There will be no further public consultation on these regulations in this phase of the regulatory reform.

Once the regulations are approved by Cabinet they will be available on the [Parliamentary website](#). We anticipate a flurry of activity by WorkSafe New Zealand as soon as the regulations are made and prior to them commencing later this year.

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EXTENDING THE DURATION OF A TEST CERTIFICATE

Under clause 7(2) of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001, applications can be made to WorkSafe to increase the validity period for a location test certificate from 12 months. The longer validity period may not exceed 36 months.

Similarly under clause 93, Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004, applications can be made to WorkSafe to increase the validity period for a stationary container system test certificate. The longer validity period may not exceed 15 years for an above ground stationary tank or process container, or 10 years for a below ground stationary tank.

In determining an application for an extended test certificate period WorkSafe must consider the quantity and type of hazardous substances, the monitoring systems in place and the compliance history of the [Person Conducting a Business or Undertaking \(PCBU\)](#). Once we have approved an extended validity period, the test certifier would issue a test certificate for that period.

When that test certificate expires, and a renewal test certificate is issued (assuming the site is compliant), this must be for the standard period in the regulations. A further application to WorkSafe must be made if the PCBU requests an extended validity period for that test certificate.

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GUIDANCE FOR USING HSNOCOP 42-1

It has come to our attention that clarification is needed regarding how test certifiers apply Code of Practice HSNOCOP 42-1: The Storage of Class 3.1 Flammable Liquids in Retail Stores.

The quantities of class 3.1B and 3.1C flammable liquids typically stored in large-format retail hardware stores generally exceeds the quantity thresholds of Table 4, Schedule 3 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001, and therefore triggers the separation distance requirements of Schedule 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 (Gazette Notice 35).

Due to the large amount of stock sold on a daily basis by large format retail stores, the limitations of Gazette Notice 35 prevented stock from being replaced within a reasonable timeframe. The Code of Practice (COP) was approved under clause 33(1)(b) of Gazette Notice 35 to allow a reasonable time for stock replacement. The COP was developed by the New Zealand Retailers Association Inc in conjunction with Mitre 10, Placemakers and Bunnings.

The COP sets out the conditions under which flammable liquids of classes 3.1B and 3.1C can be stored in quantities greater than those allowed for in Table 4, Schedule 3 of the Hazardous Substances (Classes 1 to 5 controls) Regulations 2001. The maximum quantities for the application of this COP are specified in Table 1 of the COP.

The scope of the COP is quite specific as to its coverage. It only applies when:

- > the store is a 'retail shop' or 'retailer of agricultural chemicals' as defined in AS/NZS 3833:2007, **and**
- > the retail shop or retailer of agricultural chemicals has areas which are accessible to the public, **and**
- > the retail shop or retailer of agricultural chemicals is in a standalone building with a minimum separation distance of three metres to HILU external to the building **or** where there is a wall in common with another building, the wall must have a fire resistance rating of at least 240/240/240 FRR, and there is a separation distance of at least three **metres** when measured around the wall.

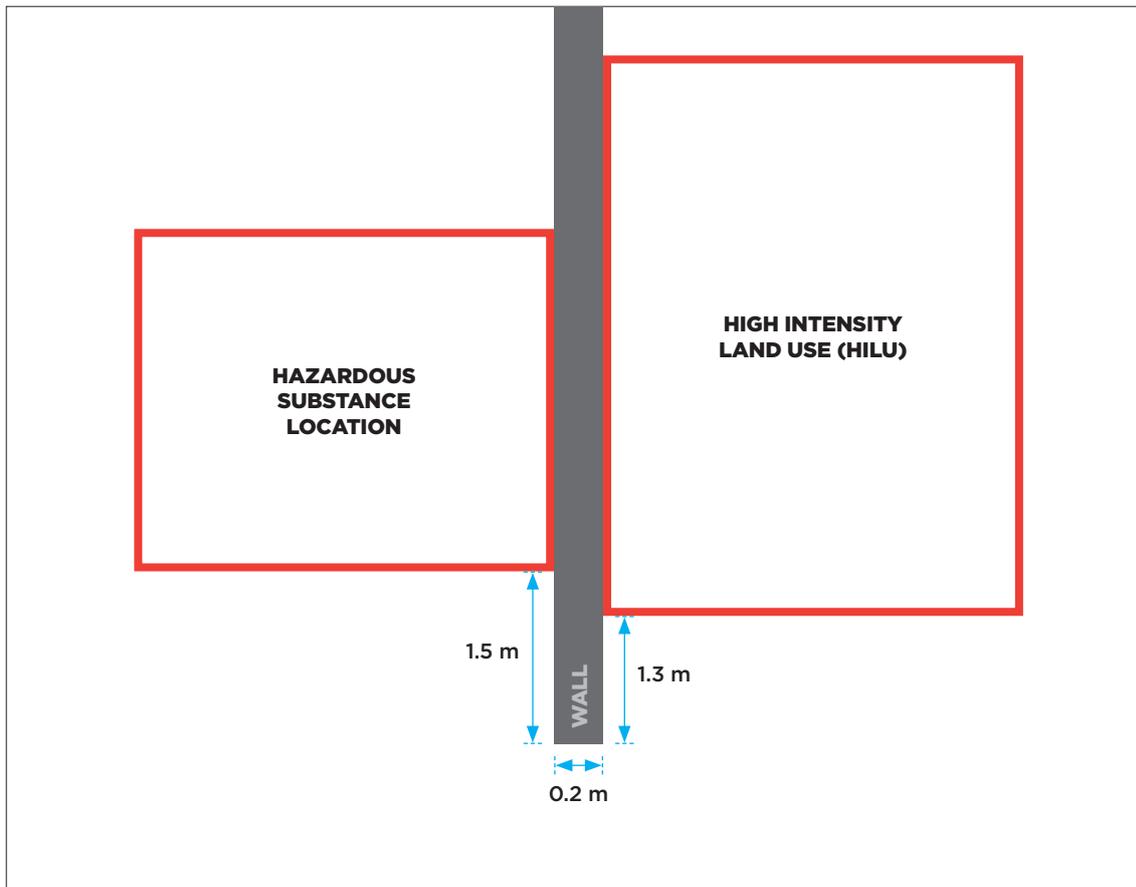
It is not applicable to retail stores which are part of a complex of shops.

It is a requirement that stores that do not meet the criteria above are assessed for separation distances according to Schedule 10 of the Gazette Notice.

If test certifiers have issued a location test certificate to such stores on the basis of a different interpretation to that set out above, then when that certificate comes up for renewal either:

- > the volume limits of Gazette Notice 35 must be met, **or**
- > other steps are taken to ensure compliance with Gazette Notice 35, **or**
- > the PCBU may consider a clause 33 application to reduce the separation distance.

An example showing how separation distances 'around the wall' are to be measured is shown below:



KEY

- ↔ Distance around wall
- 240/240/240 fire-rated wall

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TUBEPRESS/EUROPRESS PIPEWORK FITTINGS

Recently we were asked to provide guidance on the use of crimped pipework fittings with 'o' ring seals, such as those marketed as TubePress and EuroPress, for use with hazardous substances, in particular in diesel installations.

WorkSafe has not seen or been provided with evidence that these fittings meet the requirements specified in clause 58 and clause 73, Schedule 8 of the Hazardous Substances

(Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004.

Clause 58 requires (amongst others) that pipework must be constructed of fire resistant and corrosion resistant materials. Clause 73 requires (amongst others) compliance with a specified standard such as ASME B31.4 or AS/NZS 2885.1:1997.

We have no documentation of manufacturing standard or fire resistance of the crimped fittings, despite seeking such information from the importers of these fittings. In the absence of such evidence the suitability of such fittings remains unproven. To date we are only aware of compliance for use in plumbing and drainage, and fire suppression systems – that is, non-hazardous substance applications.

Test certifiers are responsible for ascertaining that fittings used on hazardous substance pipework meet the requirements of Schedule 8. Compliance is a consideration in issuing a stationary container system test certificate. In the absence of evidence of compliance, a prudent and cautious approach is therefore warranted.

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CHANGES TO THE 2017 COLOUR CODE FOR TESTING SCUBA CYLINDERS

Section 4.10 of the [Guide to Gas Cylinders](#) provides a voluntary colour tagging system for identifying when a cylinder is next due for testing. A coloured plastic ring, tag or highlight paint is attached at the time of testing that relates to the year of the current test and to the test interval for that cylinder.

When the colour system is followed, table 4.10 provides an annual schedule for the specific colour that must be used to mark cylinders after testing.

For 2017, the colour specified for the one-year test cycle prescribed for SCUBA cylinders is **white**.

The Cylinder Testing Laboratories Association (CTLA) has advised that its suppliers are unable to provide an opaque white plastic tag for the 2017 yearly test cycle. Tags are used by CTLA members.

Therefore a **clear** tag will be used for SCUBA cylinders tested by CTLA stations in 2017.

The above changes do not apply to testing stations using the New Zealand Underwater Association ROC rings to mark cylinders.

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TANK INTEGRITY FOLLOWING THE RECENT EARTHQUAKES

Test certifiers are likely to have certified many below ground tanks and associated pipework, some of which may have been affected by the earthquakes recently experienced in the upper South and lower North Islands. Particular attention should also be given

to below ground tanks with fibreglass pipework. Anecdotal evidence suggests that under seismic loading, fibreglass pipework is susceptible to cracking at the elbow to the tank outlet and at the riser to the dispenser.

As part of your test certifier responsibilities as a [PCBU](#) under [HSWA](#), we recommend you contact your clients who have below ground tanks to ensure they are aware of the new risks the earthquake may have created.

This is not to say that all of your clients will need to have their tanks recertified. However, they should be encouraged to work with you to understand their need for accurate stock reconciliations as well as periodic monitoring of the interstitial space and/or monitoring of wells. Where there is observable fluid in

the interstitial space or wells there is a need to have the tank and pipework checked for ongoing integrity.

If you become aware of any integrity issues, please advise antony.kitchener@worksafe.govt.nz so we can assess if there are any reoccurring or common issues that might indicate a more widespread problem.

Thank you to those certifiers who have already provided us with information.

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TERRITORIAL AUTHORITY ENFORCEMENT RESPONSIBILITIES UNDER NEW REGULATIONS

[HSWA](#) provides for the regulation of hazardous substances in the workplace. Once the new hazardous substances regulations are in place, WorkSafe will be responsible for monitoring and enforcing compliance with the controls in them. These new regulations will essentially be a 'lift and shift' of existing regulations that apply to workplaces and which currently sit within the Hazardous Substances and New Organisms Act (HSNO) regime.

This means there will be controls to mitigate risks posed by hazardous substances under **two** regimes:

1. HSNO for public health and environmental risks, and
2. HSWA for workplace risks (the hazardous substances regulations).

ENFORCEMENT RESPONSIBILITIES

Currently under the HSNO Act there are a number of agencies with enforcement responsibilities including WorkSafe and territorial authorities. This is provided for in section 97 of the HSNO Act.

Going forward, monitoring and enforcement of the workplace controls under the HSWA regime will be the responsibility of WorkSafe and 'designated agencies' (ie agencies holding a designation by the Prime Minister to enforce the legislation within their jurisdiction eg Civil Aviation Authority). Territorial authorities are not authorised under the HSWA regime to enforce the new hazardous substances Regulations in workplaces.

Territorial authorities' enforcement responsibilities under [section 97\(1\)](#) of the HSNO Act in relation to premises other than those specified in paragraphs (a) to (g) (this includes workplaces) will remain unchanged. In addition, territorial authorities will still be able to enforce the HSNO Act in those other premises, when they are there to enforce the Resource Management Act 1991. Therefore, a territorial authority would, for example, be able to issue Compliance Orders in accordance with the HSNO Act for breaches of ecotoxic and disposal controls in workplaces.

When the new hazardous substances regulations come into force, the HSNO Act will also be amended to reflect the shift in regulating hazardous substance in the workplace from that Act to HSWA.

WorkSafe's enforcement role under the HSNO Act will significantly reduce, but

we will still be responsible under that Act for enforcing the Environmental Protection Authority's ecotoxic and disposal controls in the workplace. This amendment can be viewed [here](#).

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CABINET PAPERS ON DRAFT HAZARDOUS SUBSTANCES REGULATIONS

Government has made decisions on residual policy matters for the development of the new hazardous substances regulations.

The Cabinet paper and Regulatory Impact Statement are now available [here](#).

The policy decisions include:

1. Storage requirements for higher hazard toxic and corrosive substances, including requirements to establish a hazardous substance location and obtain a compliance certificate where class 6.1A, 6.1B, 6.1C and 8.2A substances are present above certain threshold quantities.
2. Not continuing approved handler certification for most hazardous substance classes. Approved handler certification will be required for higher hazard substances that require a controlled substance licence, explosive (Class 1) substances in any

quantity and acutely toxic (Class 6.1A and 6.1B) substances in any quantity.

3. Transitional arrangements.
4. Infringement offences and fees.
5. Administrative fees (for authorisations, audits, approvals and exemptions).

The Cabinet paper also addresses other policy matters that arose through consultation on the draft hazardous substances regulations, including:

1. Not continuing periodic tester certification for individual workers but enabling gas cylinder testing stations to be authorised to inspect, test and certify gas cylinders.
2. Providing compliance certifiers with the power to vary, suspend, or cancel a compliance certificate issued by them.

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PUBLIC CONSULTATION OF AS 1940

The draft revision of AS 1940 is open to public consultation and is available for comment until 14 March. If you want to make a comment

on the revision, please visit the Standards Australia website.

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