

The Test Certifier Update, a monthly newsletter to support test certifiers by providing information, guidance and updates on hazardous substances and test certification.

The Update is also available to other interested parties on the WorkSafe New Zealand website at: www.worksafe.govt.nz

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STATIONARY CONTAINER SYSTEMS: ACCEPTED ENGINEERING PRINCIPLES AND PRACTICE

Individuals seeking to become a test certifier for stationary containers and current test certifiers who are approved for stationary containers, should understand the implications of clause 5 (accepted engineering principles and practice to be applied) and clause 6 (general performance requirements for stationary container systems) of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004.

A copy of the transfer notice is available here:

[http://www.epa.govt.nz/Publications/
Transfer-Notice-35-2004.pdf](http://www.epa.govt.nz/Publications/Transfer-Notice-35-2004.pdf)

These clauses specify that the actions undertaken in respect of Schedule 8 must be carried out with consistent and accepted engineering principles and practice. Hence certifiers for stationary container systems need to know what constitutes consistent and accepted engineering principles and practice.

It is a requirement under the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations that the controls imposed under the HSNO Act are able to be described by applicants seeking to be appointed as test certifiers. Hence persons seeking to be test certifiers for stationary containers will be asked to demonstrate their knowledge of accepted engineering principles.

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REGISTER OF CERTIFIED DESIGNS AND FABRICATORS

Clause 96(3) of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 enables the Authority (WorkSafe) to place conditions on certified designs or fabricators. Going forward, WorkSafe intends to review the applications for register numbers and will

likely add conditions on the registers entry. This is particularly relevant to applications for FAB numbers.

Attention is being focused in this area due to the number of tank failures in recent years.

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PART 6 APPLICATIONS

Part 6 applications, including those for compliance plans, separation distance variations, disused underground tanks and fire-fighting waivers have specified processing times that WorkSafe strives to achieve. These timeframes, which are given on the front page of each application form, can generally only be met when an application is submitted that contains all the information required for WorkSafe to carry out its assessment of the application.

Where applications are received that contain insufficient information, WorkSafe will generally seek additional information from the applicant. Whilst some applicants respond reasonably promptly, in other cases, we may have to wait many months to receive the information. During this time, the site or equipment may continue to be non-compliant. This is an untenable situation for both WorkSafe and your client.

Going forward, when WorkSafe requests additional information, an agreed date will be given for that information to be provided. If the information is not provided by the specified date, WorkSafe will process the application on the basis of the information at hand, which will inevitably result in a decline of that application. Clearly we will be as reasonable and pragmatic as possible to enable the information to be supplied. What we wish to avoid, however, is where applications drift with no obvious end in sight.

Test certifiers are asked to assist their clients to ensure they have well prepared applications with all the necessary supporting data. A good covering letter explaining the reason for the application and how it has arisen enables WorkSafe to quickly appreciate the key intent of the application.

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HSNO COMPLIANCE SURVEY

A HSNO compliance survey to determine the level of compliance with key HSNO controls was first undertaken by the EPA in 2012 and repeated in 2014. The surveys found site compliance rates of 25-30% for all eight key controls surveyed.

Following on from those surveys, WorkSafe is about to start a third compliance survey. This survey will visit 200 sites across the country and will focus on the following three industry sectors:

- > Horticulture
- > Metal coatings
- > Timber treatment

The methodology followed will be similar to the previous EPA surveys, and will check for compliance with test certificates, signage, personal protective equipment, safety data sheets, emergency management and secondary containment. The site visits will be carried out in March and April and will be a face-to-face interview with a relevant person at the site using a pre-prepared questionnaire.

Results from the survey should be available in the third quarter of 2015.

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RE-BREATHING CYLINDERS

Applications are being received for waiving the pre-commissioning of small cylinders that are being imported for re-breathing purposes. These cylinders do not have a design approval. For WorkSafe to waive the pre-commissioning requirements, we have in the past had to match the design against designs - (LAB numbers) for larger SCUBA cylinders. This type of match is not ideal. While each application has only been for one or two cylinders, when considered together, the

number of cylinders applied for, and approval given, has become significant.

WorkSafe will no longer accept these applications until there is a verified design(s) for these types of small cylinders. When a verified design is in place, an application for a waiver of pre-commissioning can then be made.

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POLICE-OPPOSED CSL APPLICATIONS

We often receive questions from applicants and Test Certifiers regarding how a person's criminal history may affect the outcome of their application for a controlled substance licence (CSL). The following information may be useful to understand how applicants are assessed and how an application will progress if the police oppose the granting of a CSL.

One of the criteria an applicant must meet to be granted a CSL is that they must be a 'fit and proper person'. This generally means that the person is of good character, abides by the laws of New Zealand and is generally likely to continue to do so while in possession of a controlled hazardous substance. An applicant therefore generally cannot have a history of criminal convictions or traffic infringements.

Every CSL application is subject to a vetting check with the New Zealand Police. Criminal conviction information about the applicant is released by Police in accordance with the Criminal Records (Clean Slate) Act 2004 and may include such things as:

- > conviction history
- > pending criminal convictions
- > protection orders made against the applicant under the Domestic Violence Act 1995
- > behavioral history, including any history of violence, drug or alcohol abuse
- > driving demerit points, suspension of licence or traffic infringements issued.

Applicants provide permission to Worksafe to carry out the vetting check with the Police by signing the declaration page of the CSL application form. The declaration must have been signed by the applicant within the last three months to allow us to request the police check.

A vetting check will return an opinion from Police as to whether the applicant is a 'fit and proper person' to possess the substance concerned.

If the police offer no objection, the application will continue on through the assessment process. However, if the police oppose the application, WorkSafe will contact the applicant in writing. The applicant will be requested to provide information on the police report, which Worksafe will consider as part of their application. In particular, an applicant will be asked to provide:

- > A personal statement that explains why they consider a CSL should be issued.
- > A description of the circumstances of the convictions listed in the police report, including how and why they occurred. (The applicant should also explain what steps they have taken to prevent any reoccurrence.)
- > Supporting character references from an employer or person of standing within the community (references from a spouse, partner, relative or police officers will not be accepted).
- > A description (and details) of any counselling and/or rehabilitation that the applicant may have undertaken in respect of their convictions.
- > Any other information that would support their application.

Applicants have 30 working days to reply to Worksafe with this information. The application will then be reviewed, along with the police report and consideration will be given to any new information provided by the applicant. A final decision is then made on whether or not the applicant is a 'fit and proper person'.



It would be appreciated if Test Certifiers could remind applicants of the importance of being honest when completing the 'fit and proper person' assessment section of the CSL application form. Failure to declare

a criminal background, traffic infringement history or behavioral issues is also likely to be detrimental to the outcome of their application.

It should also be noted that the processing time for an application that is police-opposed is significantly longer than a standard application that receives a clear Police vetting check. There are obviously delays associated with waiting for additional information from the applicant and further time is then required to review/re-assess the application. Applicants need to be aware that this will take some time to complete.

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PERIODIC TESTING: APPROVAL IS SITE SPECIFIC

WorkSafe has noticed that a number of periodic testers are changing test stations without seeking re-approval as a periodic tester. Approval as a periodic tester is only valid for the testing station given on your periodic tester approval. If you decide to move to a different testing station, **your approval becomes invalid and you must seek a new approval for the new testing station.**

The approval requires that the testing station you are moving to is accredited by International Accreditation New Zealand (IANZ) or New Zealand Underwater Association (NZUA). The professional indemnity insurance for that testing station also needs to be supplied with your application.

If the testing station is a new station it will first have to be accredited by IANZ or NZUA for the site, its equipment and procedures. Assessment by IANZ or NZUA will also need to identify you as a 'signatory' with the necessary skills to use the testing equipment at the site.

If in doubt, please contact WorkSafe on 0800 376 234 or email hsinfo@worksafe.govt.nz regarding the conditions of your approval and the process for seeking an approval for a new testing station.

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HSNO REFORM

When the Health and Safety Reform Bill is passed, it will make changes to the way hazardous substances are managed in New Zealand. The major change proposed is that the rules relating to workplace health and safety involving hazardous substances will move out of the HSNO Act and under the new Health and Safety at Work (HSW) Act. Many of the current HSNO requirements will be replaced by regulations made under the HSW Act. Additionally, many of the remaining HSNO requirements will be set under EPA Notices in future.



EPA NOTICES

EPA Notices will be a new way for the EPA to set rules under the HSNO Act. The notices will allow the EPA to simplify and consolidate hazardous substance rules that are currently spread across different sets of regulations, transfer notices, group standards and individual approvals.

The EPA has recently consulted on proposals for five EPA Notices:

- > Classification
- > Labelling
- > Safety data sheets
- > Packaging
- > Hazardous substance enforcement officer qualifications.

The EPA has advised that they received well thought through submissions on their proposals and will soon be releasing a summary of how they intend to take account of the feedback they have received. The EPA will advise when this information is available.

PROPOSED NEW ENFORCEMENT ROLE FOR THE EPA

Another significant change for the EPA as a result of the proposed amendments is that they will have a new enforcement role. The EPA will be responsible for:

- > enforcing compliance with labelling, safety data sheets, packaging and product content controls
- > enforcing compliance with the prohibitions on persistent organic pollutants
- > ensuring each hazardous substance has a HSNO approval.

The EPA is currently making preparations for this new function.

COMING SOON - NOTICE PROPOSAL FOR INFORMATION MANUFACTURERS AND IMPORTERS MUST PROVIDE TO THE EPA

To support their new enforcement role, the EPA will be asking hazardous substance importers and manufacturers for specific information. The EPA is currently drafting their notice proposal setting out what information will be required. This consultation document is expected to be available for comment in March/April 2015.

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PASSWORDS FOR THE TEST CERTIFICATE REGISTER

There are new business rules regarding access to the test certificate register. These have been introduced to enhance the current level of security. All **new** passwords must:

- > be a minimum of 10 characters
- > contain a capital letter
- > contain a number
- > can only be used once ie, a previously used password cannot be used again.

For the moment, all existing passwords will continue to work. When you next elect to change your password or if you need to replace it because you have forgotten it, your new password will need to meet the above specifications.

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CONTACTING WORKSAFE HSNO STAFF

The transfer of hazardous substances functions from the EPA to WorkSafe may have created some confusion as to the most appropriate way for a test certifier to contact the Certifications, Applications and Registrations (CAR) team.

For all HSNO related queries, test certifiers can contact the CAR team using the following contact details:

Email: hsinfo@worksafe.govt.nz
Phone: 0800 376 234

General workplace-related health and safety queries should be directed to the main WorkSafe contacts:

Email: info@worksafe.govt.nz
Phone: 0800 209 020

Health and safety and HSNO workplace-related incidents and enforcement queries should be directed to:

Email: h&scomplaints@worksafe.govt.nz
Phone: 0800 030 040

Notification of refusal to issue a test certificate should be sent to:

Email: healthsafety.notification@worksafe.govt.nz

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VIDEO: ACCIDENT AT SPANISH CHEMICAL FACTORY

Test certifiers may be interested in a recent accident which occurred at a chemical manufacturing plant in the Spanish town of Igualada. The accident is believed to be the result of a chemical reaction between nitric acid and ferric chloride, which was caused when the products were accidentally mixed together while they were being unloaded at the factory. The accident resulted in a toxic, orange cloud being released into the atmosphere above the small town. A video of the incident can be viewed here:

<http://www.bbc.com/news/world-europe-31450915>

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