

The Test Certifier Update is a WorkSafe 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: [www.worksafe.govt.nz](http://www.worksafe.govt.nz)

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# SAFE WORK INSTRUMENTS

## SAFE WORK INSTRUMENTS - WHAT AND WHEN?

You've probably heard that safe work instruments are part of the new health and safety regulatory toolbox, and that WorkSafe is developing some to deal with hazardous substances.

This article is the first of a series we'll run in the Test Certifier Update during 2017. It covers what safe work instruments are, what types WorkSafe is planning to develop, and when they will come into effect. Future articles will discuss in detail which safe work instruments will be developed, and what is happening to HSNO Codes of Practice as a consequence.

## WHAT IS A SAFE WORK INSTRUMENT?

Safe work instruments (SWIs) are a new tool in the Health and Safety at Work Act (HSWA) 2015. They are a type of subordinate instrument (sometimes called tertiary legislation) that sits below a regulation. SWIs are developed by WorkSafe and approved by the Minister for Workplace Relations and Safety.

SWIs can be used for a wide range of purposes under HSWA, but only where specifically allowed for in regulations.

SWIs can be used to:

- > prescribe detailed or technical matters, or standards, that change relatively frequently and will often be industry-specific
- > set additional or varied workplace controls for hazardous substances approved or reassessed by the Environmental Protection Authority (EPA)
- > provide an alternative means of complying with a regulation or regulations and
- > support the effective operation of the health and safety regulatory framework, for instance by setting exposure monitoring standards or stipulating requirements for training, competence or safety management systems.

## WHEN WILL THE FIRST SWIS FOR HAZARDOUS SUBSTANCES BE MADE?

Two types of SWIs relating to hazardous substances must be in place on Day One - that's what we're calling the date when the Health and Safety at Work (Hazardous Substances) Regulations (the HS regulations) come into force in December 2017. These Day One SWIs are needed if duty-holders compliant with requirements set under the Hazardous Substances and New Organisms (HSNO) Act 1996 are to remain compliant with relevant provisions that have been transferred to the new HS regulations.

The two types of hazardous substance SWIs needed for Day One are to:

- > replace HSNO Codes of Practice and
- > continue some workplace controls set by the Environmental Protection Authority.

## SAFE WORK INSTRUMENTS THAT REPLACE CODES OF PRACTICE

The HS regulations envisage that in many cases SWIs can be used in a similar way to Codes of Practice under the HSNO Act. The EPA (and its predecessor ERMA New Zealand) and WorkSafe have approved Codes of Practice that provide alternative means of complying with requirements prescribed under the HSNO Act. The draft HS regulations provide for SWIs to detail alternative ways to comply with requirements in the regulations, in places where HSNO Codes of Practice do this under the corresponding HSNO provisions.

WorkSafe is aiming to ensure that on Day One, SWIs are in place to ensure that PCBUs now compliant under a HSNO COP can continue with the same alternative compliance options.

### NEW OR VARIED WORKPLACE CONTROLS FOR HAZARDOUS SUBSTANCES

Safe work instruments are also being developed to continue relevant new or varied workplace controls made by the EPA since the consultation draft of the HS regulations was finalised in mid-2015. These SWIs will also incorporate some substance-specific controls that were included in the consultation draft of the HS regulations, but which have been removed during the revision phase.

Requirements that are already dealt with by the HS regulations, or by duties under HSWA or the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, are not being incorporated into safe work instruments. There is, though, a need for two SWIs to transfer EPA workplace controls to the HSWA regime for Day One.

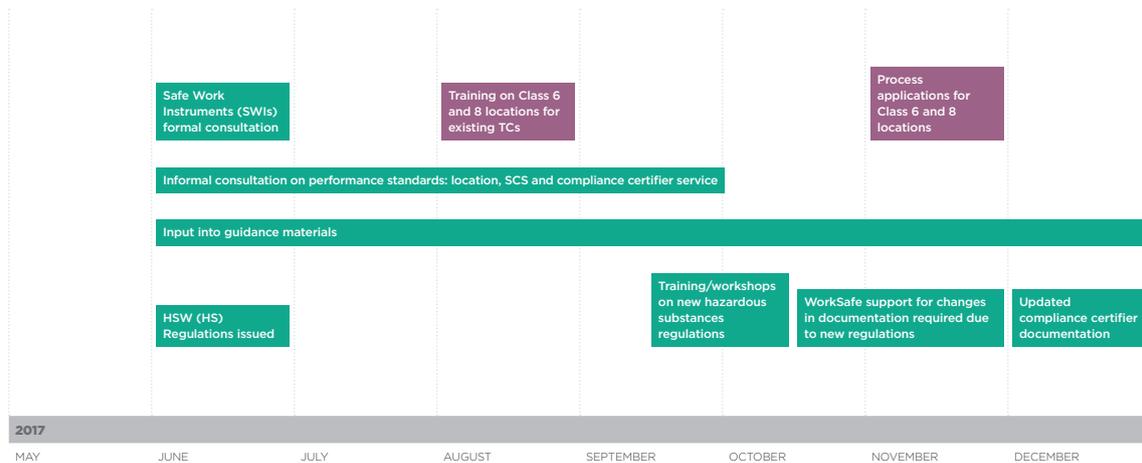
Stay tuned for further updates on safe work instruments relating to hazardous substances.

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## DATES OF INTEREST TO TEST CERTIFIERS IN 2017

Below is a timeline of useful dates relevant to test certifiers relating to the release of the new hazardous substances regulations:

### TEST CERTIFIER TIMELINE



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## TEST CERTIFIER WORKSHOPS

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We will be holding an initial round of one-day workshops for test certifiers during **the week of 19-23 June**. The current allotted dates are: Auckland Tuesday 20 June, Wellington Wednesday 21 June and Christchurch Thursday 22 June.

The workshop will cover:

- > the new Hazardous Substances regulations
- > performance standards
- > safe work instruments and
- > anything test-certifier related.

We will confirm the exact date of the workshops by the end of May, so if you could keep the above dates in mind in your work schedule, that would be helpful. We will be in touch with agenda, date and venue.

If there are specific topics you would like covered, please email [kate.studd@worksafe.govt.nz](mailto:kate.studd@worksafe.govt.nz) by Monday 12 June.

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## RESIDENTIAL ADDRESS ON APPROVED HANDLER TEST CERTIFICATE

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It is not uncommon for approved handler test certificates to be issued without a residential address. However, this is contrary to the HSNO regulatory requirements. Regulation 4(2) of the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations states:

**A test certificate as an approved handler must state the name of the approved handler, and his or her residential and work contact information (such as a street address and telephone number).**

This means that both a residential and work address must be included on the test certificate. Furthermore, the address should be a physical address, not a PO Box number.

We understand that some test certifiers are concerned that including address information on a certificate is a breach of the person's privacy and hence the Privacy Act. As the Personnel Qualification Regulations require the contact information to be included on the certificate, doing so does not breach the Privacy Act.

The new Health and Safety at Work (Hazardous Substance) Regulations are carrying over the same provisions.

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## MAJOR HAZARD FACILITIES – NEW AND PROPOSED SITES

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Operators of proposed Major Hazard Facilities (MHF) must notify WorkSafe if they believe their facility is likely to hold quantities of specified hazardous substances that equal or exceed the lower tier threshold quantity specified in the Regulations (for example, over 10 tonnes of chlorine). Notifications of existing facilities were required to be made by 4 July 2016.

If a Test Certifier finds a site that they believe could be an MHF but which has not notified WorkSafe, then they should contact WorkSafe to talk it through with an MHF Inspector, or get the PCBU to do so: [hhu.mhf@worksafe.govt.nz](mailto:hhu.mhf@worksafe.govt.nz)

The first step in the process is the requirement to notify WorkSafe. Based on the notification, MHF inspectors will make an assessment and designate the facility as either upper tier, lower tier, or not an MHF. Only when the designation is made do the other MHF Regulations apply to the facility (or not apply as the case may be), as specified in the **Health and Safety at Work**

### (Major Hazard Facilities) Regulations 2016.

For a lower tier MHF requirements include: major accident prevention policy; emergency management plan based on a safety assessment; safety management systems including personnel training; auditing review, incident management.

If designated as an MHF, the facility will be included in an inspection programme by the WorkSafe MHF inspectors. For HSNO non-compliances the inspector will follow the process outlined in Issue [5/2015](#) of the Test Certifier Update.

Further information on the MHF regime can be found on the WorkSafe website: [www.business.govt.nz](http://www.business.govt.nz)

Good Practice Guides for MHF operators are published on the WorkSafe website: [www.worksafe.govt.nz](http://www.worksafe.govt.nz)

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## WAIVERS FOR SEPARATION DISTANCES AND LOCATION TEST CERTIFICATES

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A test certifier cannot issue a location test certificate for a non-compliant site on the grounds that the person in charge is going to apply for a separation distance waiver or that the waiver application was in process.

Conditional location test certificates may be issued for sites where the non-compliance is 'minor and technical' – this can include situations where Clause 32 or 33 applications

would be supported by the test certifier. The full location test certificate can then be issued if the application is approved – but obviously becomes a non-compliant site if the waiver application results in a decline.

The [\*Performance Standard for Conditional Location Test Certificates\*](#) is the best guidance in this case.

Location test certificates cannot be issued for a site which does not comply with the requirements of the regulations, including Schedule 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004. This applies even if a separation distance waiver application is in process. Test certifiers cannot assume that a waiver application will be approved and issue a full location test certificate in anticipation of the approval.

Furthermore, if a waiver is granted by WorkSafe the site will need to comply with the conditions of that waiver before a location test certificate can be issued.

If a test certifier cannot issue a full or conditional location test certificate they must inform WorkSafe of the site's non-compliance.

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## **BURNERS – HANDLING MODELS NOT ON THE REGISTER OF APPROVED BURNERS**

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When assessing a stationary container system which includes a burner, a test certifier must confirm that the burner is approved and registered – that is, listed in one of the registers of approved burners published on the WorkSafe website. The registers for approved burners are available on our website: [worksafe.govt.nz](https://worksafe.govt.nz)

Some test certifiers have come across burners that are not recorded on either of these registers. Under Schedule 8, clause 68 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004, a burner must not be used unless it is approved and registered.

These burners have generally been found at public sector sites such as hospitals and schools, perhaps because burners installed in government departments did not require an approval under the previous Dangerous Goods legislation.

Clause 69 provides for deemed approval of previously approved burners under regulation 116 of the Dangerous Goods (Class 3 – Flammable Liquids) Regulations 1985. The 'Register of Previously Approved Burners' lists these burner models.

WorkSafe has determined that the only means for approving existing but unlisted models is by way of a compliance plan.

A revised version of the compliance plan application form tailored to the requirements of recognising burners installed prior to 2004 has been created. When a test certifier finds such a burner, please contact [hsinfo@worksafe.govt.nz](mailto:hsinfo@worksafe.govt.nz) for a copy of the tailored application form. The supporting information will be that which can be reasonably expected at this late stage (ie a photo of burner name plate and a manual of operation and maintenance). The form includes a space for the test certifier to comment on the state of maintenance and repair of the burner, and provide evidence of its servicing.

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# GUIDANCE ON REFURBISHMENT OF ABOVE GROUND TANKS

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A draft guidance note was published in issue 4/2015 of the Test Certifier Update on the refurbishment of above ground tanks for classes 3.1A, 3.1B, 3.1C and 3.1D hazardous liquids. By omission this was never updated on the website, however it can now be found at: [worksafe.govt.nz](https://www.worksafe.govt.nz)

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## VALIDITY OF A TEST CERTIFICATE WHEN THE OWNERSHIP OF A BUSINESS CHANGES

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The hazardous substances legislation is silent on the issue of what to do when the ownership of a business changes.

A location test certificate is not necessarily invalid if the **ownership** of a business changes. Regulation 77(4), 95(5) and 116(5) of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 requires the person in charge to ensure that a test certificate is obtained where required. If a new owner establishes that a location test certificate was obtained by the previous owner then they have fulfilled their obligation. However if there are any changes at the site (eg in quantities of hazardous substances or the number of approved handlers) a new assessment is required.

As far as stationary container systems are concerned clause 91, Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer

Notice 2004 states: 'No person may put a hazardous substance into a stationary container system... unless the stationary container system is certified'. Again, if the new owner establishes that a test certificate was obtained by the previous owner, then they have fulfilled their obligation.

However, if there are repairs, alterations or modifications to the stationary container system, Schedule 8 does indicate that the test certificate becomes invalid.

Some companies like to have test certificates re-issued in their name, however a new test certificate with a new commencement date would require a further assessment of the system. The test certifier should not re-issue a certificate as a purely administrative activity, as the system may have changed in the time since the original certificate was issued.

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# UPDATE FROM HAZARDOUS SUBSTANCES PROFESSIONALS (NZ) INC (HSPNZ)

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The following article was provided by HSPNZ.

The organisation has now achieved legal entity status and has been approved by the Companies Office as a recognised society. Since our inaugural meeting back in November 2016, we have now held our first set of regional meeting in early March and there was a good attendance by 46 Test Certifiers and another 16 apologies, who were all keen to see the establishment of such an organisation.

There were meetings in Auckland, Cambridge , Wellington and Christchurch and we have four regional chairpersons who will be organising future meetings, with an expectancy of at least three per year. The next series of meetings will be around August. We have a couple of email addresses for use: the secretary [sec@hspnz.co.nz](mailto:sec@hspnz.co.nz) and our admin team [info@hspnz.co.nz](mailto:info@hspnz.co.nz) who will be happy to answer any queries.

We are also working on an interactive website that should be up and running in a couple of months. Presently, we do have a domain [www.hspnz.co.nz](http://www.hspnz.co.nz) but only a base webpage where you can view our constitution, code of ethics and Continuing Professional Development (CPD) programme.

This CDP programme will provide ongoing assurances that our members keep up the competencies expected of such professionals. Initially it will be a target of eight hours per year. WorkSafe have been very supportive and will be providing training on the new HS regulations this year. HSPNZ will also be developing training courses and offering support for test certifiers to increase the scope of their approval where possible, in such areas as tank certification, explosives, and chemicals, especially the class 6.1 and 8.2 where Location Test Certificates will be required in future.

We will be working closely with WorkSafe to ensure safety in the workplace is achieved. A number of WorkSafe's HSNO specialist inspectors attended our regional meetings and were able to network with test certifiers. It is looking like a bright future for this relationship going forward.

Recently HSPNZ sent out membership applications to all registered test certifiers and are presently working through the large number of returned applications.

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# WORKSAFE AUTHORISATIONS POLICY

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WorkSafe published an *Authorisations Policy* on 20 March 2017. This outlines the underlying principles relating to WorkSafe's administration of health and safety authorisations and aims to improve the quality and consistency of authorisation decisions, such as for test certifiers.

The guiding principles are:

- > to use a consistent approach in the same or similar circumstances
- > to be fair, just and impartial
- > to be transparent
- > to undertake informed decision making
- > to be timely and responsive when making a decision

- > to have context-specific and proportionate interventions (eg conditions on an authorisation).

The CAR team will be guided by this new policy when issuing authorisations under the HSWA (Hazardous Substances) regulations for:

- > test (compliance) certifiers
- > controlled substance licences
- > test stations.

The authorisations policy is available on our website: [worksafe.govt.nz](http://worksafe.govt.nz)

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## HSNOCOP 25-1 – REVOKED

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HSNOCOP 25-1 – the code of practice for the Management of Existing Stationary Container Systems at Timber Treatment Facilities – has been revoked effective as of 4 May 2017.

Stationary container system test certificates can no longer be issued against this code of practice.

Test certificates issued under this code prior to 4 May 2017 remain valid for the one year validity period, however when they expire the

stationary container system must meet the full requirements of Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004.

Replacement of the stationary container system could be required, unless the tanks are suitable for a compliance plan application.

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## TEST CERTIFIER LIAISON ROLE

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Kate Studd has joined the CAR as a Senior Advisor. Kate has a background in chemical and process engineering with considerable industrial experience at the Kinleith Pulp & Paper Mill followed by years in oil and gas consulting. A key part of Kate's role is liaison with Test Certifiers and she is looking forward to meeting many of you at the upcoming workshops. Kate can be contacted at: [kate.studd@worksafe.govt.nz](mailto:kate.studd@worksafe.govt.nz)

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## STORAGE OF FLAMMABLE LIQUIDS IN CLOSED PACKAGES

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Guidance on storing up to 2000 L of flammable liquids in closed packages was developed by WorkSafe in August 2016. This guidance will be useful for persons conducting a business or undertaking (PCBU) storing flammable liquids in discrete packages, and to test certifiers when assessing such sites. The guidance document is available on our website: [worksafe.govt.nz](https://www.worksafe.govt.nz)

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## NEW HAZARDOUS SUBSTANCES WEBSITE

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Over the past six months we have been busy updating the hazardous substance sections of our website, re-arranging all relevant pages into one module containing six sub-sections, so that all hazardous substances information is easily found in one place. The new hazardous substances landing page is available on our website: [worksafe.govt.nz](https://www.worksafe.govt.nz)

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