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Health and Safety at Work (Hazardous Substances— Requirements for Specified Fumigants) Safe Work Instrument 2017

This safe work instrument is approved under section 227 of the Health and Safety at Work Act 2015 by the Minister for Workplace Relations and Safety, being satisfied that appropriate consultation has been carried out under section 227(3) of that Act.

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Safe Work Instrument

1 Title

This is the Health and Safety at Work (Hazardous Substances—Requirements for Specified Fumigants) Safe Work Instrument 2017.

2 Commencement

This safe work instrument comes into force on 1 December 2017.

3 Overview

In this safe work instrument—

- (a) clause 5 modifies, the notification requirements in regulation 14.7(2) of the Regulations (under regulation 14.7(4) of the Regulations) for fumigation using Tri-Form 60:
- (b) clause 6—
 - (i) modifies the signage requirements in regulation 14.10(1) of the Regulations (under regulation 14.10(4) of the Regulations) for fumigation using Tri-Form 60; and
 - (ii) specifies an alternative time by which a PCBU must ensure signs are removed, for the purposes of regulation 14.10(5)(b) of the Regulations, for fumigation using Tri-Form 60:
- (c) clause 7—
 - (i) modifies the signage requirements in regulation 14.10(1) of the Regulations (under regulation 14.10(4) of the Regulations) for fumigation using Ripper range; and
 - (ii) specifies an alternative time by which a PCBU must ensure signs are removed, for the purposes of regulation 14.10(5)(b) of the Regulations, for fumigation using Ripper Range:
- (d) clause 8 modifies the notification requirements in regulation 14.7 of the Regulations (under regulation 14.7(4) of the Regulations) for quarantine or pre-shipment fumigation using methyl bromide:

- (e) clause 9 modifies the signage requirements in regulation 14.10(1) of the Regulations (under regulation 14.10(4) of the Regulations) for quarantine or pre-shipment fumigation using methyl bromide:
- (f) clause 10 modifies the notification requirements in regulation 14.7 of the Regulations (under regulation 14.7(4) of the Regulations) for soil fumigation for potato wart using methyl bromide:
- (g) clause 11 specifies an alternative time by which a PCBU must ensure signs are removed, for the purposes of regulation 14.10(5)(b) of the Regulations, for soil fumigation for potato wart using methyl bromide:
- (h) clause 12 requires AFE-HFP to comply with specified regulations:
- (i) clause 13 modifies the notification requirements in regulation 14.7(2) of the Regulations (under regulation 14.7(4) of the Regulations) for fumigation using AFE-HFP:
- (j) clause 14—
 - (i) modifies the signage requirements in regulation 14.10(1) of the Regulations (under regulation 14.10(4) of the Regulations) for fumigation using AFE-HFP; and
 - (ii) specifies an alternative time by which a PCBU must ensure signs are removed, for the purposes of regulation 14.10(5)(b) of the Regulations, for fumigation using AFE-HFP:
- (k) clause 15 specifies the maximum area of the application block, if AFE-HFP is applied, for the purposes of regulation 14.20(2)(c) of the Regulations:
- (l) clause 16 specifies requirements for the size of a buffer zone, for fumigation using AFE-HFP, under regulation 14.22(8) of the Regulations.

4 Interpretation

- (1) In this safe work instrument, unless the context otherwise requires,—

Act means the Health and Safety at Work Act 2015

AFE-HFP means AFE-HFP, HSNO approval number HSR101251

Regulations means the Health and Safety at Work (Hazardous Substances) Regulations 2017

Ripper range has the meaning given the term **Ripper range (30-55% iodomethane and 45-70% chloropicrin)** in regulation 14.2 of the Regulations

site has the meaning given in regulation 14.32 of the Regulations.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this safe work instrument has the same meaning as in the Act or the Regulations.

Modified requirements applying to Tri-Form 60

5 Notification of intended fumigation – Tri-Form 60

- (1) This clause applies to a PCBU who intends to carry out fumigation using Tri-Form 60.
- (2) For the purposes of regulation 14.7(4) of the Regulations, regulation 14.7 applies as if the following subclause were inserted after subclause (3):

"(3A) A PCBU who intends to carry out fumigation using Tri-Form 60 must also notify each person who may be affected by the fumigation who is normally present within 100 m from the outer edge of the buffer zone of the PCBU's intention to carry out fumigation not less than 24 hours before the start of the fumigation."

6 PCBU must erect signs – Tri-Form 60

- (1) This clause applies to a PCBU with management or control of fumigation using Tri-Form 60.
- (2) For the purposes of regulation 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation must erect signs in accordance with the following:

 - (a) the fumigation is of a type listed in regulation 14.9(a) to (f) or (i), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) state that fumigation is being carried out; and
 - (ii) identify the fumigant being used and state that it is toxic to humans; and
 - (iii) describe the general type of hazard associated with the fumigant; and
 - (iv) if the fumigant is flammable, describe the precautions necessary to prevent the unintended ignition of the fumigant:
 - (b) for fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) can be readily seen by any person approaching the buffer zone; and
 - (ii) state that fumigation is being carried out; and
 - (iii) identify the fumigant being used and state that it is toxic to humans; and
 - (iv) describe the general type of hazard associated with the fumigant; and
 - (v) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

- (3) For the purposes of regulation 14.10(5)(b) of the Regulations, the PCBU with management or control of fumigation using Tri-Form 60 must ensure that signs are removed within 72 hours of the end of the buffer zone period.

Modified requirements applying to Ripper Range

7 PCBU must erect signs – Ripper range

- (1) This clause applies to a PCBU with management or control of fumigation using Ripper range.

- (2) For the purposes of regulation 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation must erect signs in accordance with the following:

- (a) if the fumigation is of a type listed in regulation 14.9(a) to (f) or (i), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) state that fumigation is being carried out; and
 - (ii) identify the fumigant being used and state that it is toxic to humans; and
 - (iii) describe the general type of hazard associated with the fumigant; and
 - (iv) if the fumigant is flammable, describe the precautions necessary to prevent the unintended ignition of the fumigant:
- (b) for fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) can be readily seen by any person approaching the buffer zone; and
 - (ii) state that fumigation is being carried out; and
 - (iii) identify the fumigant being used and state that it is toxic to humans; and
 - (iv) describe the general type of hazard associated with the fumigant; and
 - (v) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

- (3) For the purposes of regulation 14.10(5)(b) of the Regulations, the PCBU with management or control of fumigation using Ripper Range must ensure that signs are removed within 72 hours of the end of the buffer zone period.

Modified requirements applying to quarantine or pre-shipment fumigation using methyl bromide

8 Notification of intended fumigation – quarantine or pre-shipment fumigation using methyl bromide

- (1) This clause applies to a PCBU who intends to carry out quarantine or pre-shipment fumigation (other than soil fumigation for potato wart) using methyl bromide.
- (2) For the purposes of regulation 14.7(4), regulation 14.7 applies as if the following subclauses were inserted after subclause (3):
 - "(3A) The PCBU who intends to carry out fumigation using methyl bromide at a site must notify the occupants of each property within 25 m of the site of the PCBU's intention to carry out fumigation not less than 24 hours before the start of the fumigation.
 - (3B) If a marae is adjacent to a site, the PCBU who intends to carry out fumigation using methyl bromide must make appropriate notification arrangements with local Māori.
 - (3C) A PCBU who intends to apply more than 100 kg of methyl bromide in a 24-hour period must notify the occupants of each property within 100 m of the site, including moored boats, of the PCBU's intention to carry out fumigation not less than 24 hours before applying the methyl bromide.
 - (3D) The requirement to notify persons under subclauses (3A), (3B), and (3C) is treated as having been complied with if—
 - (a) fumigation is carried out at the site weekly; and
 - (b) the relevant persons are notified of the intention to carry out regular fumigations at the site before the initial fumigation, and after that annually, by a notice setting out –
 - (i) where the fumigation will occur; and
 - (ii) the time at which ventilation will normally occur (if this can be specified); and
 - (iii) the expected frequency of the fumigation; and
 - (iv) any likely seasonal trends in the timing and scope of the fumigation.
 - (3E) Subclauses (3A), (3B), and (3C) do not apply to fumigation when recapture technology is used.
 - (3F) To avoid doubt, the notification requirements in subclauses (3A) to (3C) apply in addition to any applicable notification requirements in subclause (1) or (2)."

9 PCBU must erect signs – quarantine or pre-shipment fumigation using methyl bromide

- (1) This clause applies to a PCBU who intends to carry out quarantine or pre-shipment fumigation using methyl bromide (other than soil fumigation for potato wart).
- (2) For the purposes of regulation 14.10(4) of the Regulations, regulation 14.10 applies as if:

- (a) subclause (1) were replaced with the following:
- "(1) A PCBU with management or control of fumigation must erect signs in accordance with the following:
- (a) if the fumigation is of a type listed in regulation 14.9(a) to (f) or (i), signs must be erected at every point of entry to the buffer zone, for those parts of a buffer zone that extend over land, that—
 - (i) state that fumigation is being carried out; and
 - (ii) identify the fumigant being used and state that it is toxic to humans; and
 - (iii) describe the general type of hazard associated with the fumigant; and
 - (iv) if the fumigant is flammable, describe the precautions necessary to prevent the unintended ignition of the fumigant:
 - (b) for fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h), signs must be erected at every point of entry to the buffer zone, for those parts of a buffer zone that extend over land, that—
 - (i) can be readily seen by any person approaching the buffer zone; and
 - (ii) state that fumigation is being carried out; and
 - (iii) identify the fumigant being used and state that it is toxic to humans; and
 - (iv) describe the general type of hazard associated with the fumigant; and
 - (v) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."
- (b) subclause (3)(e) were amended by deleting "underground)." and substituting "underground); and":
- (c) the following were inserted as subclause (3)(f):
- "(f) where the buffer zone extends over water, be able to be readily seen by any person approaching the buffer zone from a seaward direction at any time, including during the hours of darkness."

Modified requirements applying to soil fumigation for potato wart using methyl bromide

10 Notification of intended fumigation – soil fumigation for potato wart using methyl bromide

- (1) This clause applies to a PCBU who intends to carry out soil fumigation for potato wart using methyl bromide.
- (2) For the purposes of regulation 14.7(4) of the Regulations, regulation 14.7 applies as if the following subclause were inserted after subclause (3):

"(3A) A PCBU who intends to carry out soil fumigation for potato wart using methyl bromide must also ensure the following persons are notified in writing of the PCBU's intention to carry out fumigation not less than 48 hours before applying the methyl bromide:

- (a) the medical officer of health:
- (b) the PCBU with management or control of any place within 100 m of the site where the public is likely to be present and unable to readily evacuate (for example, a school, a playground, a child care facility, a prison, a hospital or a long-term care facility)."

11 PCBU must erect signs – soil fumigation for potato wart using methyl bromide

- (1) For the purposes of regulation 14.10(5)(b) of the Regulations, a PCBU with management or control of soil fumigation for potato wart using methyl bromide must ensure that signs are removed after the later of—
 - (a) 24 hours after the sheet is removed; and
 - (b) the time when the concentration of methyl bromide measured at 30 cm above the treated soil has been less than 0.05 ppm for a period of 15 minutes.

Requirements applying to AFE-HFP

12 AFE-HFP required to comply with specified regulations

- (1) AFE-HFP is required to comply with:
 - (a) regulation 14.4 of the Regulations under regulation 14.4(1)(c) of the Regulations:
 - (b) regulation 14.20 of the Regulations, under regulation 14.20(1)(c) of the Regulations:
 - (c) regulation 14.21 of the Regulations, under regulation 14.21(1)(c) of the Regulations:
 - (d) regulation 14.22 of the Regulations, under regulation 14.22(1)(c) of the Regulations:
 - (e) regulation 14.23 of the Regulations, under regulation 14.23(1)(c) of the Regulations:
 - (f) regulation 14.24 of the Regulations, under regulation 14.24(1)(c) of the Regulations:
 - (g) regulation 14.26 of the Regulations, under regulation 14.26(1)(b) of the Regulations:
 - (h) regulation 14.27 of the Regulations, under regulation 14.27(1)(b) of the Regulations.
- (2) To avoid doubt, subclause (1) applies in addition to any requirements under the Regulations that apply to, or in relation to, AFE-HFP.

13 Notification of intended fumigation - AFE-HFP

- (1) This clause applies to a PCBU who intends to carry out fumigation using AFE-HFP.

- (2) For the purposes of regulation 14.7(4) of the Regulations, regulation 14.7 applies as if the following subclause were inserted after subclause (3):

"(3A) A PCBU who intends to carry out fumigation using AFE-HFP must also notify each person who may be affected by the fumigation who is normally present within 100 m from the outer edge of the buffer zone of the PCBU's intention to carry out fumigation not less than 24 hours before the start of the fumigation."

14 PCBU must erect signs - AFE-HFP

- (1) This clause applies to a PCBU with management or control of fumigation using AFE-HFP.

- (2) For the purposes of regulation 14.10(4) of the Regulations, regulation 14.10 applies as if subclause (1) were replaced with the following:

"(1) A PCBU with management or control of fumigation must erect signs in accordance with the following:

- (a) if the fumigation is of a type listed in regulation 14.9(a) to (f) or (i), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) state that fumigation is being carried out; and
 - (ii) identify the fumigant being used and state that it is toxic to humans; and
 - (iii) describe the general type of hazard associated with the fumigant; and
 - (iv) if the fumigant is flammable, describe the precautions necessary to prevent the unintended ignition of the fumigant:
- (b) for fumigation of a type listed in regulation 14.9(a), (b)(ii) or (iii) or (iv), (e), (g), or (h), signs must be erected around the perimeter of the buffer zone at every point of entry to the buffer zone that—
 - (i) can be readily seen by any person approaching the buffer zone; and
 - (ii) state that fumigation is being carried out; and
 - (iii) identify the fumigant being used and state that it is toxic to humans; and
 - (iv) describe the general type of hazard associated with the fumigant; and
 - (v) if the fumigant is flammable, describe the precautions necessary to prevent unintended ignition of the fumigant."

- (3) For the purposes of regulation 14.10(5)(b) of the Regulations, the PCBU with management or control of fumigation using AFE-HFP must ensure that signs are removed within 72 hours of the end of the buffer zone period.

15 Size of application block - AFE-HFP

For the purposes of regulation 14.20(2)(c) of the Regulations, a PCBU with management or control of fumigation using AFE-HFP must ensure that the application block is not more than 32 hectares.

16 PCBU to set buffer zones - AFE-HFP

For the purposes of regulation 14.22(8) of the Regulations, the requirements in subclauses (5) and (6) of regulation 14.22 and Table 3 in Schedule 18 of the Regulations apply to AFE-HFP as if references to Tri-Form 60 were references to AFE-HFP.

Made at Wellington on 27 November 2017.

Hon Iain Lees-Galloway
Minister for Workplace Relations and Safety

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This safe work instrument is administered by WorkSafe New Zealand.