

Hazardous substances

EMERGENCIES

May 2019

CONTENTS

Purpose	1
Roles and responsibilities	1
Our approach to responding to hazardous substances situations	2
When we will contact FENZ	2
How we will decide whether to use our imminent danger or HSNO Act emergency declaration powers	2
How to declare a HSNO Act emergency	3
Situations arising from a new organism	3
Ceding control of a WorkSafe declared HSNO Act emergency	3
Ending an emergency	4
After the emergency	4
It may be appropriate for WorkSafe to retain control of the scene	4
We may choose to take further action after a hazardous substances emergency	4
Related policies and procedures	4
Publication and review of this policy	5

Purpose

This policy outlines how we'll respond when we face a situation involving hazardous substances that might justify the use of:

- Health and Safety at Work Act 2015 (HSWA) imminent danger powers and/or
- Hazardous Substances and New Organisms Act 1996 (HSNO) emergency powers.

This policy should be read alongside our *Hazardous Substances Disposal Controls and Ecotoxic Controls Operational Policy*. That policy sets out how we'll respond to non-emergency situations relating to the disposal of hazardous substances and/or ecotoxic substances.

Roles and responsibilities

Dutyholders

HSWA emphasises the duty of the person conducting a business or undertaking (PCBU) to manage risks to workers and other people.

We expect PCBUs to comply with the controls for, and manage the risks associated with, the hazardous substances they use, store, manufacture, handle, transport, or dispose of.

The Environmental Protection Authority (EPA)

The EPA regulates hazardous substances by:

- deciding whether to approve new hazardous substances
- putting rules (controls) in place to manage the risks of hazardous substances to safeguard people and the environment, and
- reassessing hazardous substances and making new decisions regarding their risk management (when necessary).

WorkSafe

We are responsible for enforcing the *Health and Safety at Work (Hazardous Substances) Regulations 2017* (the HSWA HS Regulations) and the HSNO Act in workplaces. This includes controls for the disposal of hazardous substances and ecotoxic substances.

We administer the HSWA HS Regulations for the use, storage, handling, transport, and manufacture of hazardous substances in places of work, and the EPA's rules (controls) for disposal. We're responsible for taking action where PCBUs are not complying with those controls.

Under the HSNO Act our inspectors may exercise the powers of a HSNO Act enforcement officer in relation to hazardous substances in any workplace. This includes the power to declare a hazardous substances emergency.

Fire and Emergency New Zealand (FENZ)

FENZ is the lead agency for emergencies involving hazardous substances.

Their role is to stabilise or make safe incidents, and provide for the safety of people and property endangered by incidents involving hazardous substances.

FENZ can attend any hazardous substance-related incident.

New Zealand Police

The New Zealand Police are generally the lead agency for emergencies involving explosives where there is no fire or spillage. This includes abandoned explosives and bomb threats.

Our approach to responding to hazardous substances situations

In deciding what intervention to take our inspectors will consider:

- their own health and safety
- their legislative powers
- our policies, including our Enforcement Decision-making Model
- the health and safety of workers and anyone else who may be affected
- the duties and capability of the PCBU
- whether it's appropriate for the PCBU to retain control of the site
- the role and capabilities of other agencies, particularly FENZ.

In all cases the inspector must consider their own personal health and safety and do what is needed to keep themselves safe and well.

When we will contact FENZ

We'll contact FENZ when we respond to hazardous substances-related situations and one of the following applies:

- we declare a HSNO Act emergency
- the PCBU is unable (or can't be expected) to safely or satisfactorily resolve the situation
- the PCBU refuses to contact FENZ when asked by an enforcement officer to do so
- there are wider concerns for public safety and/or environmental damage and the PCBU can't remedy these.

In some instances a FENZ response may not be required. In these situations we'll still contact them to provide them with information about the situation.

How we will decide whether to use our imminent danger or HSNO Act emergency declaration powers

There may be times when it's appropriate for an inspector to assume control of a site by:

- taking any necessary steps under section 170 of HSWA to reduce or remove the cause of any actual or imminent danger and/or
- declaring an emergency under section 136 of the HSNO Act.

We will only use these powers where we consider there is:

- a high risk of significant harm to a person or people (and/or the environment in the case of ecotoxic substances), and
- the need for immediate action to eliminate or mitigate that risk.

Where our inspectors are unclear about whether this threshold has been met they'll apply a precautionary approach and declare the emergency. Wherever possible this will happen after the inspector has sought help from their manager,¹ and the manager has liaised with Technical Programmes and Support, if needed.

In most instances use of the HSWA imminent danger powers will be sufficient to manage the situation. We expect that inspector-declared HSNO Act emergencies will be rare events.

¹ In the case of after hours events the inspector should seek help from the after hours manager.

How to declare a HSNO Act emergency

In declaring a HSNO Act emergency an inspector will:

1. contact their manager to discuss the situation (if it's safe and practicable to do so)
2. ask their manager to contact Technical Programmes and Support, if needed, to discuss the situation (if it's safe and practicable to do so)
3. tell the PCBU that they are declaring a HSNO Act emergency
4. contact FENZ (or ask someone else from WorkSafe to do so)
5. notify the EPA of the declaration
6. remain on site to brief the FENZ Officer-in-Charge on their arrival and offer ongoing support as required.

Situations arising from a new organism

As HSNO enforcement officers, our inspectors have the power to declare an emergency arising from a new organism under section 135(b) of the HSNO Act.

Our inspectors aren't trained for situations involving new organisms. They should not declare an emergency under this provision.

Ceding control of a WorkSafe declared HSNO Act emergency

An inspector will cede authority to another agency or individual as soon as reasonably and safely practicable. This will be decided on a case-by-case basis, in consultation with the inspector's manager. The manager will liaise with Technical Programmes and Support, when needed.

In many situations this will happen automatically with FENZ. If FENZ arrive at the scene and are treating the situation as an emergency, then:

- it ceases to be an emergency under the HSNO Act
- it becomes an emergency under the Fire and Emergency New Zealand Act 2017 (FENZ Act), and
- FENZ assumes control.

After ceding control to FENZ, the inspector remains onsite throughout the incident (if possible and it is safe to do so). The inspector should brief FENZ on the situation when they arrive.

If an inspector can't remain onsite, or their presence is not required, we'll arrange for an inspector or Technical Programmes and Support to be contactable by phone.

In the unlikely event FENZ don't attend the site, the inspector who declared the emergency should seek further guidance from their manager, and Technical Programmes and Support.

In all cases the inspector must consider their own personal health and safety and do what is needed to keep themselves safe and well.

Ending an emergency

Under Section 136(4) of the HSNO Act, a HSNO Act emergency ceases to exist when the first of these occurs:

- 48 hours after the time of declaration
- when a state of emergency is declared under the *Civil Defence Emergency Management Act 2002*
- when the emergency is treated by FENZ as an emergency under the *Fire and Emergency New Zealand Act 2017*
- when an emergency is declared under section 144 of the *Biosecurity Act 1993*.

After the emergency

Once the situation has stabilised and the emergency is over, FENZ will look to hand control of the site back to us or the PCBU. We expect that FENZ will offer control of the site to us in the first instance.

In general we'll allow control of the site to be handed back to the PCBU. But there may be times where this is not possible such as where we need to preserve the scene.

It may be appropriate for WorkSafe to retain control of the scene

In rare circumstances we may remain in control of the scene after the emergency has ceased to exist.

Where this happens we'll seek to:

- find an appropriate agency or individual to cede control to, or
- make alternative arrangements for the site. These arrangements will only be made after discussion with the inspector's manager and Technical Programmes and Support.

We may choose to take further action after a hazardous substances emergency

We may choose to take further action following a hazardous substances emergency. Whether we take further action, and what action we take, will be guided by *When will WorkSafe intervene?* and our normal principles and decision-making framework.

Related policies and procedures

This policy links to our:

- Hazardous Substances Disposal Controls and Ecotoxic Controls Operational Policy
- Response Regulatory Function Policy
- Remedial Action Policy
- Enforcement Regulatory Function Policy
- Inspection Regulatory Function Policy
- Investigations Regulatory Function Policy
- Enforcement Decision-making Model (EDM).

Publication and review of this policy

This policy is part of WorkSafe's Practice Framework and will be available externally.

Policy owner: General Manager, Better Regulation and Legal

Policy reviewed: April 2019

Next review date: April 2023

Distribution: This policy will be published on WorkSafe's website and intranet.

Published: May 2019

PO Box 165, Wellington 6140, New Zealand

worksafe.govt.nz



Except for the logos of WorkSafe, this copyright work is licensed under a Creative Commons Attribution-Non-commercial 3.0 NZ licence.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc/3.0/nz>

In essence, you are free to copy, communicate and adapt the work for non-commercial purposes, as long as you attribute the work to WorkSafe and abide by the other licence terms.

