

November 2024

How we respond to hazardous substances emergencies

This policy's purpose

This policy clarifies how we'll respond to situations involving hazardous substances that may 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:

- [Hazardous substances disposal controls and ecotoxic controls](#)
- [How we intervene](#)
- Major incident response plan

In every situation we expect our inspectors to do what's needed to keep themselves, workers and others safe and well.

When we'll contact FENZ

We contact FENZ when we respond to a hazardous substance incident and one of the following applies:

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

We may also contact the local authority, regional council, or regional public health agency if the incident could have an impact beyond work health and safety.

Our role in hazardous substances incidents

We enforce the HSNO requirements for workplaces and the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations). Under HSNO our inspectors have the power to declare a hazardous substances emergency.

Our approach to responding to potential hazardous substances emergencies

When deciding how to intervene our inspectors consider:

- their legislative powers
- our policies
- the PCBU's duties and capability
- whether it's appropriate for the PCBU to retain control of the site
- the role and capabilities of other agencies, particularly Fire and Emergency New Zealand (FENZ).

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

Our inspectors have powers under two Acts that allow them to respond to a hazardous substances emergency:

- HSWA section 170 allows our inspectors to assume control of a workplace to take any necessary steps to reduce or remove the cause of any imminent danger and/or
- HSNO section 136 allows our inspectors to declare an emergency arising from a new organism.

Our inspectors only use these powers when they consider there's:

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

If our inspectors are uncertain about whether these criteria are met, they apply a precautionary approach and declare an emergency. Generally, use of the HSWA imminent danger powers will be sufficient to manage the situation.

Situations arising from a new organism

As our inspectors aren't trained for situations involving new organisms, we expect they wouldn't use this power to declare an emergency arising from a new organism. We expect that inspector-declared HSNO emergencies are rare events. When inspectors do declare an emergency under HSNO they follow operational guidance.

Ceding control of a WorkSafe New Zealand declared HSNO emergency

Our inspectors cede authority to another agency or individual as soon as reasonably and safely practicable as we attend in our inspection capacity, not as an Incident Controller. This decision to cede authority is made on a case-by-case basis, in consultation with their manager. The manager liaises with the Technical Advisory team, if needed.

FENZ are the lead agency for emergencies involving hazardous substances, automatically take on incident control after arriving at the scene. If FENZ treats the situation as an emergency under the Fire and Emergency New Zealand Act 2017 (FENZ Act), then:

- it ceases to be an emergency under HSNO
- FENZ assumes control.

After ceding control to FENZ, our inspectors remain onsite throughout the incident, if it's possible and safe to do so. Our inspectors brief FENZ on the situation when they arrive.

If inspectors can't remain onsite, or their presence is not required, we arrange for an inspector or the Technical Advisory team 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 the Technical Advisory team.

When a HSNO emergency ceases

An emergency declared under HSNO section 136(4) ceases 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 FENZ Act, or
- 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 hands control of the site back to us or to the PCBU.

We expect FENZ will offer control of the site to us first in case we have ongoing investigative requirements and need to preserve the scene. However, in general, we allow control of the site to be handed back to the PCBU.

Our inspectors may consider issuing a Non-Disturbance Notice under HSWA if the inspector reasonably believes that it's necessary to do so to facilitate the exercise of their compliance powers.

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

In exceptional circumstances we may remain in control of the scene after the HSNO emergency has ceased if a non-disturbance or prohibition notice is in place.

When this happens, we seek to:

- find an appropriate agency or individual to cede control to, or
- make alternative arrangements for the site.

Our inspectors only make these arrangements after discussion with a manager and the Technical Advisory team.

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

When we consider whether to take further action after an emergency we're guided by our policies and Enforcement Decision-making Model.