

# **Chapter 2: Regulatory Framework**

## 2 Regulatory Framework

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### Key Points

- The most relevant statutes for hazardous substance management are the Resource Management Act 1991 (RMA) and the Hazardous Substance and New Organisms Act 1996 (HSNO).
- The RMA is the principal statute for land use controls for hazardous facilities.
- Controls under both statutes are intended to be consistent and complementary.
- Other relevant statutes include the Health and Safety in Employment Act 1992 (HSE), the Building Act 1991 and the Agricultural Compounds and Veterinary Medicines Act 1997.

### 2.1 Resource Management Act 1991 (RMA)

#### 2.1.1 Functions of regional councils

The functions of regional councils with respect to hazardous substances management are defined by section 30 of the RMA:

*“(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:*

*[...]*

*(c) The control of the use of land for the purpose of –*

*[...]*

*(v) The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; [...]*

*(f) The control of discharges of contaminants into or onto land, air, or water and discharges of water into water.”*

A further dimension is added to regional council responsibilities by the Second Schedule of the Act, which defines what matters may be provided for in regional policy statements and plans. These include discharges of contaminants into or onto land, air and water, the prevention or mitigation of any adverse effects of the storage, use, disposal, and transportation of hazardous substances (Clause 1), and any matters relating to the management of any actual or potential effects of any use, development or protection described in Clauses 1 or 2 on the creation, minimisation, recycling, treatment, disposal, and containment of all forms of contaminants (Clause 4).

In 1993, an amendment to section 62 of the Act provided for regional councils determining in the regional policy statement which local authority shall have responsibility for “ [...] developing objectives, policies and rules relating to the control of the use of land for [...] the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances”. Regional councils therefore have a role in controlling the use of land for the purpose of managing hazardous substances if they choose to exercise this function.

Changed again through the HSNO Act, however, the default responsibility now lies with territorial authorities (TAs) if not specified in the regional policy statement.

### **2.1.2 Functions of territorial authorities**

Historically, TAs have had a land use planning and operational role with respect to hazardous substances management. Under the Dangerous Goods Act 1974, TAs have controlled the storage of dangerous goods by issuing dangerous goods licenses. Basic controls were also applied for land use under the old Town and Country Planning Act 1977.

Under section 31 of the Resource Management Act, TAs have been vested with the:

*“... control of any actual or potential effects of the use, development or protection of land, including the implementation of rules for the avoidance or mitigation of natural hazards and the prevention and mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances”*

a role which is similar to that of a regional council. A TA may carry out this function completely if so stated in the regional policy statement, or may share this responsibility with a regional council. In most regions of New Zealand, the majority of functions of controlling hazardous substance land use are carried out by TAs.

## **2.2 Hazardous Substances and New Organisms Act 1996 (HSNO)**

The Hazardous Substances and New Organisms Act 1996 (HSNO) replaces the Explosives Act 1957, Dangerous Goods Act 1974, Toxic Substances Act 1979, a substantial part of the Pesticides Act 1979 and parts of other legislation. The Act covers all substances above defined minimum hazard threshold levels, excluding radioactivity.

The main purpose of the Act is the establishment of a comprehensive assessment and approval process for hazardous substances (and new organisms), and a consistent, performance based control framework. The Act also provides for the development of regulations specifying minimum requirements for hazardous substances, regardless of the activity, location, land use, quantity or the risk of cumulative effects of a number of substances.

A transitional period for existing hazardous substances is provided for in the Act, applying controls from the repealed legislation. It is currently intended that this period will expire in July 2004 unless extended further. During this time, substance in current use will gradually be transferred to the HSNO control scheme.

Under HSNO, the Environmental Risk Management Authority (ERMA) New Zealand is the central government agency responsible for establishing and administering core conditions for the management of all hazardous substances and new organisms. A number of other central and local government agencies have an enforcement role under the Act.

The HSNO legislation provides for various regulations which, among other things, specify a classification system and performance requirements for hazardous substances (MfE, 1994). The classification system is closely linked to international systems such as the United Nations Recommendations for the Transport of Dangerous Goods (UNRTDG, 1997, 11th edition), but contains some variations to include levels of hazard which are relevant at stages of a substance's life cycle other than transport. Other performance requirements cover matters such as the

specific control of hazardous properties as well as the life cycle or systems controls (such as containment/packaging or identification/hazard communication).

Under the performance-based nature of the HSNO legislation, compliance with (ERMA New Zealand approved) Codes of Practices will become more important. Demonstrating legal compliance with such codes and possibly other relevant documentation will become an important legal defence mechanism both under the HSNO Act and other legislation.

### **2.2.1 The hazard classification system**

The HSNO Hazard Classification System was established under section 74(a) of the Act for the following hazardous properties:

- explosiveness
- flammability
- oxidising capacity
- corrosiveness
- toxicity
- ecotoxicity
- substances which, upon contact with water or air, develop any of the above hazard properties.

The system provides minimum hazard threshold levels below which substances are not covered by the legislation. It also establishes between one and six or seven hazard categories for the various hazards allowing for more stringent controls to be placed on substances with higher hazards. These controls are termed hazard classification controls or property performance requirements. (See also Section 3 for links with the UN classification systems.)

### **2.2.2 Property performance and life cycle requirements**

Property performance requirements are established under section 75 of the HSNO legislation. They are designed to reduce the likelihood of an unintended event caused by the hazardous properties of a substance and to control the adverse effects of the event.

The HSNO “pan-life cycle” (or systems) requirements cover the following areas:

- packaging and containers
- identification
- tracking and competency
- emergency preparedness
- disposal.

These requirements apply at all or some defined stages of the life cycle of a hazardous substance, regardless of location or land use.

## **2.3 Links between HSNO and planning controls under the RMA**

As stated, HSNO requirements are minimum requirements which need to be met in all parts of New Zealand. Local planning documents cannot specify lesser requirements for hazardous substances covered by the HSNO legislation than those specified by HSNO. However, planning controls can be more stringent in some cases, for example to protect sensitive environments and locations, or in cases of risk of synergistic and/or cumulative effects of several hazardous substances, or to reflect particular concerns of local communities.

The scope of what is considered a hazardous substance from a RMA perspective may also be wider than for HSNO purposes. In practice, this means that substances with radioactive properties or potentially environmentally damaging substances, e.g. in terms of a high *biochemical oxygen demand* (BOD), can also be covered by planning controls. Hazard thresholds or cut-off levels may vary in some instances from those defined under HSNO, although this is not recommended.

It should be noted that, apart from HSNO property performance requirements and life cycle controls, other requirements may be relevant for hazardous substances planning purposes. In particular, national standards for hazardous waste management may need to be reflected in planning documents. Such standards are currently being considered by the Ministry for the Environment.

## **2.4 Other relevant legislation**

Hazardous substances are also managed under a number of other Acts of Parliament and associated regulations, which are administered by various agencies. The most important of these Acts are listed below. However, particular aspects of hazardous substances management may also be affected by other statutes not listed, such as medicines, local government or civil defence legislation.

### **2.4.1 Building Act 1991**

The Building Act covers issues associated with the construction, design and fire protection of buildings. It provides for the safe storage of hazardous substances to prevent their release into the environment in the case of fire (Section 6(2)(c)). The Act uses the general, qualitative definition of 'hazardous substance' of the Fire Service Act. The Building Code and 'approved documents' provide means of compliance with the requirements of the Act. Part F3 deals specifically with hazardous substances in buildings.

### **2.4.2 Fire Service Act 1975**

The Fire Service Act deals with matters relating to the structure, function and funding of the New Zealand Fire Service. Under this Act, incidents involving hazardous substances are considered to be emergencies that are attended by the Fire Service. Of interest is section 17N, which stipulates that the National (Fire Service) Commander shall provide for co-operation with territorial local authorities and regional councils, with special reference to hazardous substances emergencies.

### **2.4.3 Health Act 1956**

The Health Act provides for TAs to control nuisances, offensive trades, and the handling and storage of noxious substances, among other things. Although dated in some respects and long considered to require updating or replacing, this Act still provides considerable powers for managing hazardous substances.

### **2.4.4 Radiation Protection Act 1965**

The Radiation Protection Act is administered by the Ministry of Health. It deals with the control of radioactive substances, including radiation emitting equipment such as x-ray machines, and the occupational safety and health of workers who use radioactive substances. The National Radiation Laboratory in Christchurch is the principal agency providing advice and guidance in these matters.

### **2.4.5 Health and Safety in Employment Act 1992**

This Act is administered by the Department of Labour and provides comprehensive safety and health requirements for all places of work (covered by a very general and far-reaching definition). Particular emphasis is placed on hazard identification, analysis and management. Codes of Practice provide the means for meeting the requirements of the legislation.

### **2.4.6 Agricultural Compounds and Veterinary Medicines Act 1997**

This Act is administered by the Ministry for Food and Fibre (previously Agriculture) and addresses, among other things, requirements for the registration and use of chemicals as agricultural compounds or veterinary medicines. The assessment and approval process for hazardous substances covered by this Act is designed to be closely linked to the process under the HSNO legislation. The Act comes into effect at the same time as the hazardous substance parts of the HSNO Act.

### **2.4.7 Transport Act 1962 and Land Transport Act 1993**

These acts are especially relevant for the transport of hazardous substances on land. The Transport Act 1962 establishes classes of hazardous substances and places a duty on consignors and transporters of goods to package, label, segregate and provide documentation for hazardous substances, as well as requiring the training of drivers who transport hazardous substances. The Land Transport Act 1993 provides for the promulgation of Land Transport Rules, one of which, the *Land Transport Rule: Dangerous Goods 1999* (LTSA, 1999) deals with the land transport of dangerous goods (used instead of the term 'hazardous substances'). The Dangerous Goods Rule and the associated *New Zealand Standard 5433:1999* will replace the provisions of the Transport Act 1962 and the old *New Zealand Standard 5433:1988*. The transport legislation is administered by the Land Transport Safety Authority.