

November 2019

## Location compliance certificates for toxic and corrosive substances

This guidance explains the requirements for location compliance certification where toxic and corrosive substances are being stored.

This guidance is for:

- a PCBU with an existing hazardous substance location for toxic (class 6) and corrosive (class 8) hazardous substances above prescribed threshold quantities for which a location compliance certificate is required by 1 December 2019
- compliance certifiers engaged by PCBUs to certify an existing hazardous substance location
- PCBUs that establish a new hazardous substance location after 1 December 2019.

### Introduction

The guidance sets out what is required for a location compliance certificate to be issued, and how WorkSafe New Zealand will enforce compliance with the requirements for obtaining compliance certification under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations).

This includes outlining WorkSafe's approach to dealing with separation distance non-compliance due to the difficulty some PCBUs may have with meeting separation distances the Regulations currently prescribe.

The guidance should be read in conjunction with *WorkSafe's Policy Clarification: Storing Class 6 and 8 Hazardous Substances* on our website: [worksafe.govt.nz](https://worksafe.govt.nz)

### Background on PCBUs storing toxic and corrosive substances

Controls to prevent harm from toxic and corrosive substances have been in place for many years. These include requirements for safety data sheets, signage and emergency management systems.

In December 2017, these controls were extended to include location compliance certification, replicating equivalent provisions that exist for class 1 to 5 hazardous substances.

The controls require that for an existing hazardous substance location where class 6 and 8 substances are present, a location compliance certificate must be obtained from a WorkSafe authorised compliance certifier by 1 December 2019.

WorkSafe understands that some PCBUs may be unable to obtain a location compliance certificate by this date because they cannot meet the prescribed separation distance between the hazardous substance location and protected places.

### What the Regulations require

A PCBU storing solid or liquid class 6 or 8 substances above threshold quantities (Table 1) where the substances are present for more than two hours (if the substance is a tracked substance) or 24 hours (for non-tracked substances) must establish a hazardous substance location under regulation 13.34.

CLASS	HSL AT A WORKPLACE OTHER THAN A FARM OF NOT LESS THAN 4HA*	HSL SITUATED ON A FARM OF NOT LESS THAN 4HA*
6.1A	50kg or 50L	100kg or 100L
6.1B	250kg or 250L	500kg or 500L
6.1C	1,000kg or 1,000L	3,500kg or 3,500L
8.2A	50kg or 50L	500kg or 500L
8.2B	250kg or 250L	3,500kg or 3,500L

\* HA = hectare

**TABLE 1:** Threshold quantities to establish hazardous substance location (HSL) where class 6 and 8 substances are present

The PCBU with management or control of the hazardous substance location must ensure the location has a current location compliance certificate (regulation 13.38).

Regulation 13.39 requires that the certificate certify compliance with:

- notification to WorkSafe of the hazardous substance location
- the requirement for class 6 and 8 substances to be under the control of a certified handler (where applicable) or secured
- the requirement for all workers handling class 6 and 8 substances to have received information, instruction and training
- the requirements for a store or an indoor storage cabinet
- the separation distances for protected and public places
- segregation of class 6 and 8 substances from incompatible substances
- having a site plan available for inspection
- any fixed structure or installed equipment in the hazardous substance location is constructed from compatible material
- equipment used to handle the class 6 and 8 substances, and personal protective equipment requirements
- signage
- emergency management, including clean-up materials and equipment
- secondary containment.

## Location compliance certification

A PCBU must engage a compliance certifier to assess their hazardous substance location. Compliance certifiers authorised to issue location compliance certificates for class 6 and 8 substances are listed in the *Register of Compliance Certifiers* on our website: [worksafe.govt.nz](http://worksafe.govt.nz)

A location compliance certificate can only be issued if the hazardous substance location is compliant with all prescribed requirements. The PCBU must renew the certificate every 36 months.

If a certificate cannot be issued because one or more prescribed requirements are not met (other than the requirement for separation of the hazardous substance location to protected or public places; see below), the PCBU must immediately rectify the non-compliance issue.

A compliance certifier may consider issuing a conditional location compliance certificate under regulation 6.24, if non-compliance is minor and any adverse effects from it can be satisfactorily avoided.

## Why separation distance requirements may be hard to meet

Some PCBUs may not be able to meet separation distances required for compliance certification at existing hazardous substance locations because the Regulations do not:

- i. prescribe the same separation distances that previously applied under the Hazardous Substances and New Organisms Act for stationary tanks storing class 6 substances
- ii. prescribe the same separation distances specified in the Australian and New Zealand Standard *Storage and Handling of Toxic Substances* (AS/NZS 4452:1997) for other types of containers (for example, drums or intermediate bulk containers) holding class 6 substances
- iii. provide for the use of an intervening screen wall to reduce the separation distance for a stationary tank holding class 6 or 8 substances, and
- iv. provide for the use of a risk assessment to reduce the separation distance for a stationary tank and other containers holding class 6 or 8 substances.

## WorkSafe approach to dealing with separation distance requirement issues

WorkSafe is working with the Ministry of Business, Innovation and Employment (MBIE) on a regulatory solution, in line with separation distance provisions of AS/NZS 4452:1997 and the Australian Standard *The Storage and Handling of Corrosive Substances* (AS 3780:2008). This includes options for use of an intervening wall and risk assessment to reduce the prescribed separation distance.

WorkSafe will work with a PCBU when they cannot obtain a location compliance certificate for an existing hazardous substance location solely because they are unable to meet separation distances the Regulations currently prescribe, but do comply with all other requirements of regulation 13.39.

WorkSafe engages, informs and educates PCBUs with work health and safety obligations so that there is a clear understanding of health and safety compliance, and how best to manage and identify risks.

We target our enforcement activities to prevent the most serious risk of harm, focusing on activities and workplaces that give rise to the most serious risks.

## **Compliance certifier to notify WorkSafe of non-compliance**

When a compliance certifier refuses to issue a location compliance certificate for a hazardous substance location at which class 6 or 8 substances are present, they must notify both the PCBU and WorkSafe in writing and with an explanation.

This is to specifically identify those parts of the Regulations that are not complied with (for example, whether it is non-compliant with a separation distance or other matters such as signage, emergency management etc).

## **Securing compliance**

To obtain a location compliance certificate, all of the elements set out in regulation 13.39 must be certified. Compliance with most of these elements has been required since 1 December 2017.

If WorkSafe becomes aware of a PCBU storing class 6 or 8 substances without a location compliance certificate, the enforcement action we take will be proportionate to the context and risks at the workplace. This will consider the nature of the non-compliance that prevents a location compliance certificate from being issued.

Where a PCBU is compliant with all of requirements for obtaining a location compliance certificate except for separation distance as prescribed in regulations 13.41, 13.42, 13.43, 17.28 or 17.29, and a compliance certifier therefore refuses to issue a location compliance certificate, we will take into account the regulatory solution that is being worked on with MBIE.

Targeted enforcement action by a WorkSafe inspector is unlikely, through to:

- i. December 2020 for stationary tanks holding class 6 and 8 substances, and
- ii. June 2021 for containers other than stationary tanks holding class 6 and 8 substances.

Each situation will be assessed in light of its own circumstances, taking into account what is reasonably practicable of a PCBU with regard to clause 22 of the Health and Safety at Work Act 2015.

Where a PCBU can meet the separation distance requirements, they must be compliant from 1 December 2019.

Where other regulatory requirements for obtaining a location compliance certificate are not met, the risk gap will be proportionately greater. The type of enforcement action WorkSafe may take in these situations will depend on the type and extent of the non-compliance and the extent of the risk gap.

Further information on WorkSafe's approach to securing compliance is set out in our *Enforcement – Regulatory Function Policy* (August 2017) is available on our website: [worksafe.govt.nz](https://worksafe.govt.nz)

## **New hazardous substance locations at which class 6 and 8 substances will be present**

Any hazardous substance location for class 6 or 8 substances commissioned after 1 December 2019 should be designed to meet separation distance requirements of AS/NZS 4452:1997 and AS 3780:2008.

PCBUs should seek guidance from their compliance certifier or a WorkSafe inspector.

## **For more information**

### **Quick guide**

[Storing Class 6 and 8 Hazardous Substances](#)