

Submission on Health and Safety at Work (Hazardous Substances) Regulations 2017 (Minor Amendments)

15 January 2020

Ministry of business, Innovation & Employment
 WELLINGTON - By email: HSWRegs@mbie.govt.nz

Dear Sir/Madam

Introduction

Water New Zealand is a national not-for-profit sector organisation comprising approximately 2000 corporate and individual members in New Zealand and overseas. Water New Zealand is the principal voice for the water sector, focusing on the sustainable management and promotion of the water environment and encompassing the three waters: drinking water, waste and storm waters.

As an industry body representing water and wastewater system operators, whose systems are involved in both the management and generation of waste, Water New Zealand welcomes the opportunity to comment on the government's Hazardous Substances Regulations.

We support the government's response in making the work environment safer. Our submission highlights some of the challenges and inconsistent interpretation our members face across New Zealand.

Part 2: Points relating to correcting references to New Zealand and International Standards

14.	17.29 (1) (a)	Separation of tanks containing class 8 substances from protected and public places	Amend reference from "section 5.3.2.2 (b) to (d) of AS 3780:2008 (2nd Edition)" to "section 5.3.2 of AS 3780:2008 (2nd Edition)".
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While we believe this is an improvement on the existing regulation as the additional sections from the standard that have been included detail how distances can be measured, allow for reduction of distance through appropriate risk assessment and control, it does introduce some further inconsistencies such as allowing a 0.6m distance between tanks (Regulation 17.20 states a minimum of 1m). In addition, we also believe that this change does not address the underlying issue of the definition of protected place and request that this be redefined to allow some facilities currently viewed as protected places to be excluded from the definition of protected place (see matters relating to the definition of Protected Place below).

Part 3: Points relating to correcting inconsistencies within the Regulations

19.	13.29 (2) / Sch. 15	Requirement to segregate class 6 and 8 substances from certain other hazardous substances.	Replace statement in 13.29 (2) “substances...specified in Schedule 15 are incompatible with class 6.1A, 6.1B, 6.1C, 8.2A, 8.2B, and 8.2C substances” with a statement that substances are incompatible if listed as incompatible in Sch. 15.
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While we believe the proposed change is an improvement as it does improve the consistency within the regulation between 13.29 (2) and schedule 15, we would like to raise concern over the use of classifications to manage compatibility issues. There are exceptions to the rules created by schedule 15 (for example chlorine and sodium hypochlorite are chemically compatible but are incompatible according to Schedule 15) and the rules in Schedule 15 are not a definitive list of chemical compatibility. In order to ensure appropriate segregation, it will always be necessary to apply general rules of chemical compatibility regardless of classification. Given that general chemical compatibility information such as that provided on safety data sheets will be required regardless of the list in Schedule 15, we would like to suggest that Schedule 15 be removed, and that compatibility be determined by the chemical and reactivity characteristics of substances not classification.

Part 4: Points relating to amendments to address unintended compliance issues

31.	13.43	Separation of hazardous substance locations holding large quantities of 8.2A or 8.2B substances from protected places	Add a subsection allowing the specified separation distances between hazardous substance locations and on-site protected places to be reduced where appropriate risk identification, assessment and control processes are in place.
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While we believe this is an improvement on the existing regulation as the additional sections allow for reduction of separation distances through appropriate risk assessment and controls, we believe that this change does not address the underlying issue of the definition of protected place and request that this be redefined to allow some facilities, currently viewed as protected places to be excluded from the definition of protected place (see matters relating to the definition of Protected Place below).

34.	17.28 (1)	Separation of above ground stationary tanks containing class 6 substances from protected and public places	Amend 17.28 (1) (a) so that instead of tanks needing to meet the separation distance requirements specified in Sch. 17 they are required to meet the separation distance requirements of AS/NZS 4452:1997.
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While we believe this is an improvement on the existing regulation as the additional sections allow for reduction of separation distances through appropriate risk assessment and controls and allows for the measurement of distance around intervening walls, we believe that this change does not address the underlying issue of the definition of protected place and request that this be redefined to allow some facilities, currently viewed as protected places to be excluded from the definition of protected place (see matters relating to the definition of Protected Place below).

We also believe that the addition of 6.1D in regulation 17.28 (1) is an error and we request that the reference to 6.1D be removed from this Regulation 17.28 (1). The absence of 6.1D from regulation 17.29 and particularly the absence of class 6.1D from the tables in Schedule 17 suggest that this is an error. Alternatively, we request that it be accepted that the minimum distances for 6.1D for the purposes of Regulation 17.28 (1) be read as zero given that no distances are listed in the tables for 6.1D.

39.	Schedule 17, tables 1 and 2	Separation distances for stores of packaged class 6.1 substances from protected and public places	Add clause stating the specified separation distances may be reduced up to 50% for on-site protected places where appropriate risk identification, assessment and control processes are in place.
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While we believe this is an improvement on the existing regulation as the additional sections allow for reduction of separation distances through appropriate risk assessment and controls, we believe that this change does not address the underlying issue of the definition of protected place and request that this be redefined to allow some facilities, currently viewed as protected places to be excluded from the definition of protected place (see matters relating to the definition of Protected Place below).

Matters relating to the definition of Protected Place

It is our view that the proposed change, in conjunction with the changes proposed in points 31, 34 & 39 do not sufficiently deal with the existing issue in many areas of industry that is created by the current definition of protected place. There are a significant number of facilities that have storage and use facilities that are inside or adjacent to buildings that are viewed or have been viewed by some inspectors and certifiers as protected places under the current definition.

Water New Zealand propose that in addition to the proposed changes in points 14, 31, 34 & 39, the definition of Protected Place be altered. There are two aspects that need to be considered:

1. Storage of hazardous substances in buildings; several industries have been designing factories and plants with tanks on the interior of buildings which reduces risk by controlling who has access to the tank.
2. Storage of hazardous substances close to point of use; plants and factories that use hazardous substances for plant cleaning (e.g. CIP systems) in clean water and/or food environments can limit risk in terms of general safety and food safety when the storage facility is contained within the facility or adjacent to the building. If the building is defined as a protected place than the tanks need to be moved at significant cost and potentially increased overall risk due to increased pipe runs etc. This also duplicate the protection required for both the dosing equipment and storage.

Water New Zealand request that the exclusion that relates to buildings where the use of the hazardous substance is integral to the operation be expanded out to include such facilities as water treatment plants and wastewater treatment plants, on the basis that an appropriate risk assessment and controls are in place.

In addition to the above, the proposed change does not provide for a suitable definition of protected place. The way the current definition of Protected Place is being and has been applied in some circumstances, there are a number of buildings in manufacturing facilities across New Zealand that have chemical (bulk and transportable) that are used to store and use chemicals as part of manufacturing processes.

We thank you for the opportunity to provide feedback on the regulation changes and are happy to meet in person if more clarification is required.

Yours sincerely,

Noel Roberts

Technical Manager