

Module 7

Compliance and enforcement – roles and responsibilities of local authorities

What

- an overview of the compliance and enforcement framework under the HSNO Act
- how territorial authorities and regional councils fit into the compliance and enforcement regime
- requirements and timing for local authorities to take up their enforcement role
- dealing with hazardous substance emergencies
- about prosecution under the HSNO Act

Why

- to understand how the compliance and enforcement framework under the HSNO Act works
- to understand what the roles and responsibilities are for territorial authorities and regional councils in complying and enforcing the HSNO Act
- to see how hazardous substance emergencies are dealt with
- to enable local authorities to understand how they fit into the enforcement regime and how to plan for it
- to understand the purpose of prosecution

How

- group discussion
- exercises and report in



A danger foreseen is half avoided

Thomas Fuller

Module 7

Compliance and enforcement – roles and responsibilities of local authorities

7.1 COMPLIANCE AND ENFORCEMENT FRAMEWORK UNDER THE HSNO ACT

Overview

The HSNO Act provides strong incentives for compliance. There are significant penalties attached to the offences in the Act, including fines up to a maximum of \$500,000 (and \$50,000 per day for a continuing offence), and imprisonment for up to three months. However, the Act also provides a large amount of flexibility in the way compliance can be achieved.

Figure 7.1 shows an overview of the approach to compliance and enforcement under the HSNO Act. This shows that significant emphasis is placed on voluntary compliance, with enforcement acting as a back up where deemed to be needed. Figure 7.1 also shows that compliance and enforcement under the Act centres around the controls placed on hazardous substances.

Voluntary compliance comprises the following elements:

- taking responsibility for individual actions in complying with the HSNO Act and associated controls
- complying with codes of practice
- complying with industry standards and guidelines.

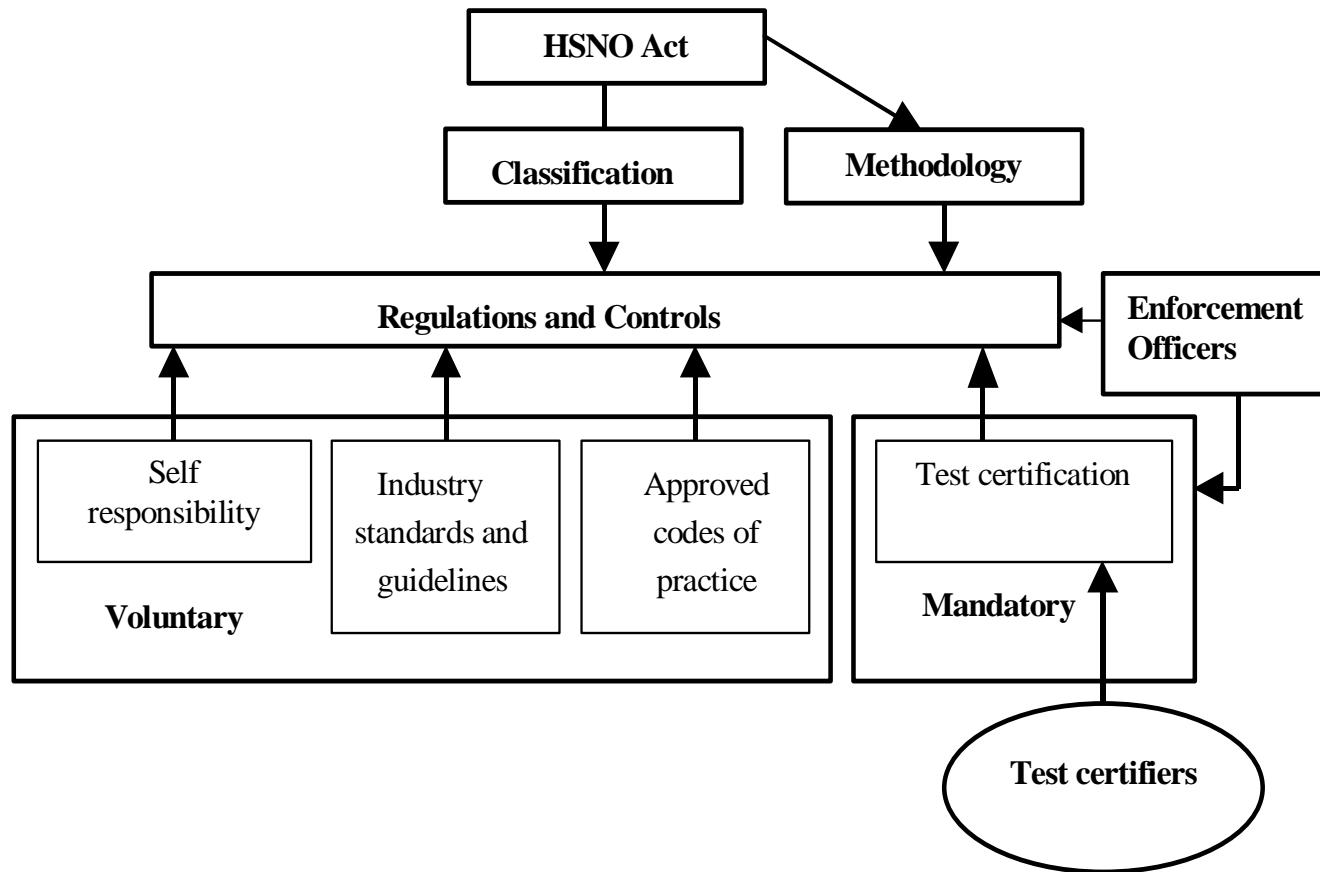
Mandatory compliance comprises the following elements:

- complying with the controls on hazardous substances, including obtaining test certificates
- inspection
- enforcement – complying with direction from enforcement agencies.



Notes

FIGURE 7.1 COMPLIANCE AND ENFORCEMENT FRAMEWORK UNDER THE HSNO ACT



7.2 CODES OF PRACTICE AND TEST CERTIFICATES

Overview

Codes of practice and test certificates are important elements of the compliance and enforcement framework. They are powerful tools to help people comply with the controls set under the Act.

Codes of practice are documents that offer best methods of meeting controls that are set out in HSNO regulations. They act as a means of demonstrating compliance with regulatory requirements which, together with best practice, are intended to eliminate or minimise the risk associated with the management of hazardous substances.

Under the HSNO Act, the Authority can formally approve a code of practice. An approved code of practice goes through a prescribed process of public notification and consultation.

Following an approved code of practice constitutes a means of defence against a charge of not complying with HSNO controls. However, users cannot be prosecuted for failure to follow a code of practice.

Test certificates are a mandatory requirement under the Act to show that a specific control under the Act is met. A test certificate also constitutes a valid defence in the case of a breach of the Act. However, failure to have a current test certificate is an offence against the Act in itself. Requirements for test certificates are outlined in the HSNO control regulations, and are not required for all controls.

More detail on codes of practice and test certificates is provided below.



Notes

Codes of practice

Many of the controls under the HSNO Act are performance-based. This means they specify a standard that has to be met, but not how it has to be met. While performance-based standards are intended to provide flexibility in terms of the technologies used, not everybody will find it easy or helpful to interpret and apply them.

Codes of practice are intended to become the day-to-day operator's "cookbook" for users required to comply with the Act. They constitute a legally acceptable tool by which performance-based controls under the HSNO Act can be met.

The HSNO Act defines the process by which codes of practice are developed, and assessed and approved by the Authority. These may be produced by either ERMA New Zealand or others.

Industry is expected to play a major role in developing codes of practice. These will become a legally acceptable standard if approved for good practice, and be instrumental in improving standards and assuring that the Act is interpreted equitably and consistently.

There is a wide range of existing industry-based and other codes of practice relating to hazardous substances that are well used in New Zealand and that the Authority is expected to approve. Codes of practice may be substance- or industry-specific. A range of codes of practice is currently in development. These are summarised in Table 7.1

TABLE 7.1 UPDATE ON CODES OF PRACTICE IN PREPARATION

Code of Practice	Drafting responsibility	Status	Approval Date (approx.)
Signage for Premises storing Hazardous Substances	NZCIC	Submitted for approval	November 02
Material Safety Data Sheets	NZCIC, OSH, ERMA	Being developed	March 03
Labelling of Hazardous Substances	NZCIC, OSH, ERMA	Being developed	April 03
Exempt Laboratories	UNI, CRI	Being developed	February 03
Agrichemical field trials	ERMA, AGCARM	Being developed	February 03
Fireworks Testing	ERMA	First draft	February 03
Pyrotechnics Display	ERMA	First draft	February 03
Management of Agrichemicals	Standards NZ, AgEdTrust	Being developed	July 03

Test certification regime

The HSNO Act employs test certification as a mandatory tool to demonstrate that a particular control under the Act is met. Test certificates show that a system, equipment or person complies with relevant controls on hazardous substances.

Test certificates can be thought of as similar to the warrant of fitness issued for a car or a practicing certificate for a qualified person.

For example, test certificates will be required to verify that containers or dispensers for particularly hazardous substances such as LPG tanks or petrol pumps meet the required controls.

Test certificates are issued by specially qualified test certifiers to:

- certify approved handlers of certain classes or subclasses of hazardous substances
- certify specific facilities or equipment for handling of certain classes or subclasses of hazardous substances

Most sites that currently require a licence for dangerous goods or explosives will end up with at least one type of test certificate. This certificate might be for handlers of specific hazardous substances, or for equipment or different parts of the site.

The test certification regime will start as soon as individual substances or groups of substances have been transferred to the HSNO regime as part of the transitional provisions of the Act (refer Module 3), or as soon as a new hazardous substance has been approved by ERMA.

Duration of a test certificate

Test certificates for facilities expire after a period determined by the Authority. Test certificates also expire after any change to design or material.

The expiry of test certificates for approved handlers is two years, if gained by virtue of approval of existing experience under repealed legislation, or five years for a new qualification.

Access to test certification in remote areas

It is acknowledged that it may be difficult and/or costly for some users of hazardous substances in remote areas to obtain their test certificates. In these instances, coordination is required between hazardous substance users and available certifiers, perhaps in conjunction with ERMA New Zealand, to generate economies of scale by negotiation and streamlining test certification activities.

Approval of test certifiers

The Authority will approve independent test certifiers who have the expertise and knowledge to qualify and who will issue test certificates covering specific types of controls. Test certifiers must have no conflicting interests in, or responsibility for any aspect of a control being certified (such as being involved in the planning or design of a facility they will certify).

The duration of approvals of test certifiers is either for five years unless otherwise approved.

The test certification regime is market-based. Test certifiers will charge a market price for their certification services. The new market-based approach is expected to make the certification process more competitive, as people will be able to shop around for the best price.

The Act itself and associated Personnel Qualification regulations, as well as guidance information and application forms produced by ERMA form the basis for anybody to apply for and become approved by the Authority as a test certifier.

Available guidance material provides detailed information on what is required for a test certifier approval, including the type and scope of approval, necessary knowledge and experience, as well as requirements for training, record keeping and professional indemnity insurance.

The experience required by test certifiers includes a minimum of two years experience of actively undertaking testing, inspection, enforcement or handling duties under a number of specified pieces of legislation (current and historical), or between three and 24 months of practical experience under the supervision of an existing test certifier covering the specific areas of certification the applicant seeks experience in.



Notes

7.3 ENFORCEMENT OF THE HSNO ACT

7.3.1 General provisions

Overview

The term “enforcement” under the HSNO Act is used to encompass:

- providing advice and promoting compliance
- inspections to establish whether compliance with HSNO Act has been achieved
- investigation of instances of potential non-compliance
- responses to emergency situations and incidents
- follow-up action in the event of non-compliance, including issuing compliance orders or initiating prosecutions

Who is responsible for enforcement?

When the HSNO Act was originally developed, there was strong pressure from the community not to set up “yet another inspectorate.” The result of this is an enforcement regime that largely mirrors the historical enforcement regime in terms of the locations where enforcement takes place. However, a major difference with enforcement under the HSNO Act from repealed legislation is that agencies are responsible for all substances in a location.

Enforcement is carried out between the Authority and a number of enforcement agencies, as further described below.

The Authority

The Authority has a supervisory role in enforcement only. Although it can appoint enforcement officers, this is a secondary function and does not imply a primary enforcement role.

Enforcement agencies must report to the Authority annually on their enforcement intentions, and the Authority in turn reports to the Minister for the Environment. To this end, the Authority sets up a reporting regime.

The Authority will also set up an audit programme that will allow it to monitor the performance of the enforcement agencies and the effectiveness of the enforcement programme overall.

The Authority will also let agencies and the Minister know where it considers insufficient or unnecessary enforcement is in place.

Enforcement agencies

The HSNO Act assigns primary enforcement responsibility to a number of agencies. Enforcement agencies warrant qualified enforcement officers to carry out their enforcement responsibilities. The agencies involved with the enforcement of the HSNO Act and their related areas of responsibility are shown in Table 7.2.

The largest player by far is the Occupational Safety and Health Service - simply because of the amount of hazardous substances in workplaces that need to be managed.

TABLE 7.2 OVERVIEW OF ENFORCEMENT AGENCIES

Agency	Area of Responsibility for Enforcement
Ministry of Health	In all places, to protect public health
Occupational Safety and Health Service, Department of Labour	On any place of work
Maritime Safety Authority	On any ship or wharf
Police and Land Transport Safety Authority	In and on roads, rail and vehicles
Civil Aviation Authority	On any aircraft or in any airport
Energy Safety Service, Ministry of Consumer Affairs	In, on or around any gas distribution system, installation or appliance
Territorial Authorities (city and district councils)	Responsibilities include: <ul style="list-style-type: none"> • premises not covered by the other agencies (e.g. private dwellings and public spaces) • enforcing the Act when enforcing the RMA • functions transferred by other enforcement agencies • dangerous goods during the transitional period of the Act



Notes

*Management of overlaps
and gaps between
enforcement agencies*

In general, the enforcement framework proposed by the HSNO Act mirrors existing arrangements. However, because of the number of agencies involved with enforcement, there will be some gaps and overlaps in the distribution of roles and responsibilities of enforcement agencies. Enforcement agencies are expected to address these gaps and overlaps through Memoranda of Understanding and other agreements.

The Act enables enforcement agencies to transfer all, or some of their powers, functions or duties– including the responsibility for the exercise of these (but not the power of transfer) - to another enforcement agency. Any transfer must be justified to and approved by the Authority.

The Act does not prevent enforcement agencies from contracting out enforcement activities, even though in this instance it would not involve the formal transfer of any powers, functions and duties as described above, and the agencies would retain the responsibility for these.

Enforcement Officers

The enforcement officer is an essential part of the implementation of the Act. The required qualifications for an enforcement officer are embedded in the Personnel Qualification regulations to the HSNO Act.

Enforcement officers are required to provide information on, and promote and check compliance with the HSNO Act and applicable controls. Overall, enforcement officers have wide powers to inspect for compliance and order action to be taken where a non-compliance is observed.

Enforcement officers may also declare emergencies. In this context, the Act gives enforcement officers extensive powers to enter premises and collect information and evidence.

Enforcement officer can issue **compliance orders** requiring a person within four days:

- to cease doing anything that contravenes the Act or is significantly dangerous; or
- to do something to ensure compliance, or to remedy the effects of a breach of the Act.

Enforcement officers can also issue **infringement notices**, which as under the RMA, work as instant fines. Infringement offences are specified in regulations to the Act, together with the amount of the fee payable for a related offence.

Infringement fees can be collected by the enforcement authority issuing the notice.

What enforcement officers do

Enforcement officers carry out checks on controls on hazardous substances, covering areas such as:

- substances are appropriately labelled and packaged
- on-site signage is appropriate
- test certificates are in place and up to date
- handlers of hazardous substances are appropriately qualified
- emergency plans are in place where needed
- no discharges resulting in exposure to humans or the environment occur.

Competency and qualifications of enforcement officers

Competency and qualification requirements for enforcement officers are laid out in the Act and regulations.

Areas of competency include:

- inspecting areas for compliance with controls on hazardous substances
- responding to and taking control of emergency situations
- giving advice on the properties and effects of hazardous substances and associated management controls.

The required competencies, knowledge and skills of enforcement officers are specified in regulations, together with a requirement of at least 6 months experience in specified areas of enforcement under the guidance of a qualified enforcement officer.

During the transitional phase of the HSNO Act and for two years after the commencement of regulations, there is provision to appoint a person as an enforcement officer without needing to prove the competencies outlined in the regulations. This applies to persons who have had continuous experience as an enforcement officer under a range of specified legislation for the 12 months prior, or were warranted as inspectors under the Health and Safety in Employment Act 1992 prior to commencement of the HSNO regulations.

Training requirements for new and existing enforcement officers are described in greater detail in Module 8.



Notes

**Coordination of
enforcement**

The details of the enforcement process will be addressed through Memoranda of Understanding between the Authority and enforcement agencies, and also between agencies. Enforcement officers will visit premises from time to time to check that controls on hazardous substances are being complied with. The frequency of inspections reflects the risks involved – with high risk premises visited comparatively more often.

Generally, enforcement responsibilities and roles under HSNO legislation carry much wider scope compared to hazardous substance related enforcement activities under the repealed Dangerous Goods legislation, as they cover controls on all properties of hazardous substances, including toxic and ecotoxic properties.

**Scoping of
enforcement activities**

Enforcement agencies will have to scope out their enforcement role based on the requirements of the Act and associated regulations, guidance provided by ERMA New Zealand, and specific conditions relating to their area of responsibility (refer Table 7.2), such as the number of facilities/premises to be covered and their associated risks.

ERMA New Zealand recommends that high-risk facilities should be inspected twice yearly, medium risk facilities once yearly and low risk facilities once every five years.

Another important factor to consider in scoping enforcement activities is the need to be able to respond to potential emergencies on a 24/7 call-out basis.



Notes

7.3.2 Roles and responsibilities of local authorities in complying with and enforcing the HSNO Act

Overview

Module 2 outlines the effect of the HSNO Act on the RMA, and associated roles and responsibilities of regional councils and territorial authorities.

Both regional councils and territorial authorities have clear roles and responsibilities in complying with the Act. This relates to adopting the definition of hazardous substances under the HSNO Act, and complying with the minimum performance standards on hazardous substances under the HSNO Act.

This has been discussed in detail in Modules 5 and 6 of this workshop manual.

The roles and responsibilities of regional councils and territorial authorities in relation of enforcing the Act are discussed in greater detail below.

Roles and responsibilities of regional councils in enforcing the HSNO Act

A regional council's responsibility for complying with and enforcing the HSNO Act consists of adopting HSNO requirements as provisions under RMA plans, rules or consents and enforcing these under the RMA. This is discussed in Modules 5 and 6.

Whilst having no direct role in enforcing the HSNO Act, regional councils may contract roles from other HSNO enforcement agencies.

Regional councils can also play an important support role in enforcing the HSNO Act. Most regional councils in New Zealand undertake pollution prevention and enforcement activities under the RMA, and end up visiting and inspecting a wide range of sites where hazardous substances are present. Such inspections may happen more frequently on some sites than those undertaken by enforcement agencies under the HSNO Act.

In setting up relationships with key enforcement agencies under the HSNO Act, regional councils can play an important role by identifying sites to HSNO enforcement agencies in situations where breaches with the HSNO Act are evident.



Notes

Roles and responsibilities of territorial authorities in complying with and enforcing the HSNO Act

Roles and responsibilities of territorial authorities for enforcement

A territorial authority’s responsibility for complying with the HSNO Act under the RMA consists of adopting HSNO requirements as provisions under RMA plans, rules or consents and enforcing these under the RMA. This is discussed in Modules 5 and 6.

Territorial authorities also play an important enforcement role under the HSNO Act. More detail on this is provided below.

Section 97 of the HSNO Act specifies the areas where territorial authorities have an enforcement role:

- premises not covered by the other enforcement agencies (e.g. private dwellings and public spaces)
- dangerous goods during the transitional period of the Act
- enforcing the Act when enforcing the RMA
- functions transferred by other enforcement agencies.

The first two enforcement roles are mandatory – that is, territorial authorities must undertake these enforcement activities under the Act.

In contrast, the second two enforcement roles are voluntary, depending on any authority’s preparedness and ability to take on such an enforcement role. To a large degree, adopting additional enforcement responsibilities is dependent on the availability of resources and the ability to recoup expenditure for enforcement activities.

Section 23 of the Act allows local authority to prescribe fees in accordance with the Local Government Act for the exercise of performance of any power, duties or functions of the Act. In reality, such a fee may be difficult to justify for enforcement purposes.

The exact scope of enforcement activities territorial authorities must and may undertake, and the relationship with other enforcement agencies – including the identification of any gaps and overlaps – is still in the process of being clarified as part of a “Whole of Government Review”. Some of the following information must therefore be viewed as preliminary, and changes may result from the review.



Notes

*Enforcement under the
repealed Dangerous
Goods legislation*

Territorial authorities currently play an important role in implementing and enforcing the repealed provisions of the Dangerous Goods Act 1974 that have been carried over to the transitional provisions of the HSNO Act.

Under these provisions, territorial authorities continue to carry out their inspection and licensing activities under the repealed Dangerous Goods Act. This is also a compulsory enforcement role.

This includes licensing most of the low to medium risk facilities involved with dangerous goods, roughly 12,000 facilities throughout New Zealand. The Occupational Health and Safety Service (OSH) is responsible for the high-risk facilities.

The HSNO Act will replace these activities with the transfer of critical groups of substances from the repealed Dangerous Goods Act to the HSNO Act, which is expected to be completed in April 2004.

When enforcing the RMA

The HSNO Act provisions specifically allow territorial authorities to enforce the HSNO Act when officers are on a premise to enforce the RMA. This is because the two Acts are designed to work together to protect the environment in an integrated way. Combining inspections for enforcement purposes is seen as an efficient way to enforce both pieces of legislation.

Whilst this is not a compulsory enforcement role, it does fit in with the general roles and responsibilities of territorial authorities for protecting the environment under the RMA.

To enforce the HSNO Act in this context, RMA compliance officers also need to be qualified HSNO enforcement officers. This means that the necessary funds need to be made available for training and warranting enforcement officers, and for carrying out inspections, issuing compliance orders or instigating prosecutions under the HSNO Act.

However, even if territorial authorities decide not to adopt this enforcement role, they would be expected to communicate and work with other HSNO enforcement agencies to achieve synergies and economies of scale in inspection and enforcement. Benefits can also be gained from such relationships by exchanging information and databases.

*Transferred
responsibilities*

Territorial authorities may also pick up specific powers, duties and functions for enforcement transferred from other enforcement agencies. What this means in practice depends on the result of the negotiations and resulting contracts between the enforcement agencies and territorial authorities in question. Funding of enforcement activities is critical factor in this context.

It is important to note that other enforcement agencies, in transferring powers, functions and duties to territorial authorities, rely on territorial authorities for more than just “enforcement” i.e. also emergency/incident responses and advisory services.

There are two main areas where such a transfer of enforcement could take place.

Enforcement in the workplace

Hazardous substances are most commonly used in places of work. Enforcement of the HSNO Act in workplaces therefore is particularly important.

Under the HSNO Act, the Occupational Safety and Health Service (OSH) of the Department of Labour has primary responsibility for enforcing the HSNO Act in places of work. However, OSH has an interest in transferring part of this the enforcement role to territorial authorities to take advantage of their existing inspection and enforcement activities under the repealed Dangerous Goods legislation and the RMA.

The scope of how a transfer of enforcement might take place, and associated funding issues, is currently the subject of the “Whole of Government Review”.

Enforcement of gas facilities

Historically, the Energy Safety Services of the Ministry of Consumer Affairs have dealt with the control of reticulated gas and gas appliances, while territorial authorities have dealt with the storage of fuel gases and cylinders as part of their duties under historical Dangerous Goods legislation.

The HSNO Act gives the EES control over all gas systems. Gas systems in places of work are expected to be dealt with by OSH, but there are many gas facilities outside of places of work that are currently licensed under repealed Dangerous Goods legislation (above 100 kg). It is likely that the EES will seek territorial authorities to become involved in this enforcement role.

7.3.3 Implementation of enforcement provisions of the HSNO Act by territorial authorities

Overview

The Authority provides detailed guidance on compliance and enforcement, including policy statements, performance standards and more general compliance guidelines.

The Chief Executive of each territorial authority is required to ensure that those enforcement provisions of the HSNO Act that are mandatory (i.e., on any premise other than those specified for the other agencies, and for the transitional provisions for dangerous goods) are met. These mandatory requirements extend to the management of emergency situations under the HSNO Act and providing advice on hazardous substances and associated controls.

Further, the Chief Executive should ensure that the optional enforcement provisions under the HSNO Act (enforcement while enforcing the RMA and any transferred functions) have been considered and evaluated, and an informed decision made on what path to take.

Required documentation

Each territorial authority should have documentation in place that explains its functions, powers and duties for enforcement, and the technical and legislative context.

Such documentation should also include any details of the transfer of functions, or the contracting out of enforcement activities. Further, the documentation should cover:

- administrative requirements
- requirements for independence, impartiality and integrity
- requirements for confidentiality
- requirements for organisation and management
- requirements for personnel (including warranting of enforcement officers, training requirements and record keeping)
- requirements for facilities and equipment
- requirements for processes and systems for compliance service, covering voluntary compliance and performance standards for inspection and enforcement
- emergency response.

A territorial authority is also expected to have in place:

- the ability to receive and record public communications and complaints
- communications with other enforcement agencies, and identification of any overlaps and gaps
- an evaluation of the parallel enforcement under the other legislation
- availability of emergency response services 24 hours a day
- an annual inspection and enforcement programme
- systems to address non-compliances
- a record keeping system to maintain track of compliance and enforcement activities.

Reporting to the Authority

Under the HSNO Act, the Authority has roles of monitoring inspection and enforcement, reporting on incidents, and conducting inquiries.

To this end, territorial authorities need to report to the Authority on a regular basis, covering inspection and enforcement, and incidents. The Authority proposes that enforcement agencies provide the following reports:

- Report 1 – Notifying Intentions, covering s 98 of the HSNO Act (annual):
 - identify the premises where the enforcement agency will carry out enforcement activities, and the nature and level of enforcement
 - information on the transfer of any functions (notification is required first)
- Report 2 – Summary of Services (annual)
 - summary of compliance activities in preceding year
 - reporting on incidents
- Report 3 – Individual Reporting of Incidents
 - report on any significant incidents (within three days of occurrence)
- Report 4 – Summary of incidents (annual).

**Declaring an
emergency under the
HSNO Act**

When an enforcement officer under the HSNO Act has reasonable grounds to believe that an emergency exists, he or she can declare an emergency, and until the emergency is over, has wide powers for managing it. "Enforcement officer" in this context includes any member of the Police, and any Chief Fire Officer or person exercising the powers of a Chief Fire Officer under section 28 or section 28A or section 29 of the Fire Service Act 1975.

An enforcement officer does not have the power to declare an emergency when:

- a state of civil emergency has been declared under the Civil Defence and emergency Management Act 2002)
- the emergency is being dealt with under the Fire Service Act
- the emergency has been declared under the Biosecurity Act
- another enforcement officer has already declared an emergency.

An emergency declared under the HSNO Act may last for up to 48 hours, and may be extended for another 48 hours.

**Co-ordination with
other emergency
services and
declarations of
emergency**

A civil emergency arises in situations where an emergency is of a scale and significant so that it cannot be dealt with by local emergency services. Such an emergency is declared based on the provisions of national and regional civil defence and emergency management plans.

Under the Fire Service Act, the Fire Service is also responsible for managing, emergencies other than those involving fire – such as those involving hazardous substances - and the safety of persons and property endangered by hazardous substance emergencies.



Notes

**Powers of
enforcement officers
in emergency
situations**

Once an emergency has been declared under the HSNO Act, enforcement officers have wide powers to deal with the situation. If it is necessary to manage an emergency, enforcement officers have powers to:

- enter into premises using reasonable force to open doors etc
- if necessary, remove or open items and collect samples
- direct any person to stop activities
- request (but not direct) any person to undertake specific actions
- direct any person to leave or not enter the area of the emergency
- requisition any property for use in managing the emergency
- destroy any property in order to prevent or limit the extent of the emergency
- secure the area for up to 24 hours after the immediate danger is past.

**Cleaning up after an
emergency**

The emergency provisions of the HSNO Act do not provide for cleaning up after an emergency. However, activities involving hazardous substances and/or new organisms need to comply with the controls attached to the substance involved in the emergency. The requirement therefore is to bring the substance back into compliance with its controls as soon as possible, as otherwise prosecution may ensue.

Therefore, it is the responsibility of the owner or transporter of the hazardous substance to ensure that any spill is cleaned up after an emergency. An enforcement officer can issue a compliance order to make sure that the spill is cleaned up. If prosecution follows an emergency, penalties can include paying for costs for mitigating and remedying adverse environmental effects.

Provisions to clean up after an emergency or compensate costs for a clean up also exist under other legislation, including land and maritime transport legislation, and the RMA.



Notes

7.4.2 Roles and responsibilities of local authorities in emergencies involving hazardous substances

Overview

An emergency response is required in cases where the use or misuse of hazardous substances poses a direct threat to human health or the environment.

Even though the RMA does not enable the declaration of emergencies, local authorities have a role in the event of spills or other accidental discharges of hazardous substances, which include:

- emergency works relating to public works, public utilities or natural areas for which a local or consent authority has responsibility
- issuing abatement notices
- powers of entry and search
- recouping costs for clean up through prosecution

Territorial authority enforcement officers also have the power to declare an emergency under the HSNO Act, and exercise the wide powers given under the HSNO Act in such circumstances.

Emergencies under the HSNO Act may also be declared any member of the Police and any Chief Fire Officer, or person exercising the powers of a Chief Fire Officer.

Responsibilities of territorial authorities for emergencies under the HSNO Act

Territorial authorities are required to warrant or contract sufficient enforcement officers to meet their requirements for enforcement, advice and emergency response under the HSNO Act. For emergencies in particular, this means access to enforcement officers must be available on a 24/7 call-out basis.



Notes

**Co-ordinating
emergency responses
involving hazardous
substances**

Local authorities in most areas in New Zealand are part of a **local Hazardous Substances Technical Liaison Committee**, which is co-ordinated by the Fire Service and also comprises other emergency services and agencies. They are designed to ensure that there will be a co-ordinated approach to declaring and managing emergencies involving hazardous substances.

In practice, it is expected that, for most actual (rather than imminent) emergencies involving hazardous substances, the Fire Service will be the first agency to declare an emergency under the Fire Services Act, since it is specifically equipped to deal with emergency situations involving hazardous substances.

In some instances, the actions of the Fire Service may not have sufficiently mitigated residual effects of the emergency on the human health or the environment. In such an instance, an additional emergency may need to be declared under the HSNO Act.

Alternatively, compliance and enforcement tools under the HSNO Act, transport legislation or the RMA may be resorted to. Again, this is best achieved through a co-ordinated response of the Hazardous Substances Technical Liaison Committee.

**Recouping costs for
emergencies**

While the HSNO Act takes a “user-pays” approach in general, a territorial authority cannot recoup costs for clean-up operations unless the party and their insurer admits responsibility and liability. The only other remedy is through prosecution.

Prosecution is also possible through other legislation such as the RMA, or land transport or maritime transport legislation.



Notes

7.5 PROSECUTION UNDER THE HSNO ACT

Prosecution under the HSNO Act

The promotion of voluntary compliance should be the primary focus of enforcement agencies, as this is the most effective means of encouraging long-term compliant behaviour (refer to Figure 7.1).

Prosecution is not always an effective means of achieving immediate action to avoid, remedy or mitigate an actual or imminent hazard, though the threat of prosecution may help elicit such action. In these circumstances, compliance orders should be considered.

However, enforcement agencies are obliged to ensure that the legislation is being complied with. Therefore, court proceedings must always be an option considered where a significant non-compliance has been identified and evidence to sustain a prosecution exists.

Overall, prosecution is meant to be reserved for circumstances where the degree of culpability, or the actual or potential consequences of the breach are of a magnitude to warrant and justify such action.

The decision whether to prosecute lies entirely with the enforcement agency or whoever is conducting the action. There is no requirement to seek the concurrence of ERMA New Zealand before taking such action, though ERMA New Zealand prefers to be advised before any prosecution.

In many circumstances, a breach of the HSNO Act will also involve a breach of other legislation, for example the Land or Maritime Transport Acts, the Health Act, the Health and Safety in Employment Act, or the RMA. In such an instance, ERMA New Zealand expects that information will be laid under the HSNO Act, in addition to any other Acts that may have also been breached.

ERMA New Zealand also expects that enforcement actions under the HSNO Act are pursued where appropriate, but accepts that enforcement agencies will adopt a strategic response in this respect.

In practice, usually only one prosecution will be brought under legislation that would be deemed most effective and successful in terms of the expected outcomes. The practicalities of this are expected to be based on communications between different agencies and local authorities, and to develop through precedent and experience.

7.6 WHEN WILL RESPONSIBILITIES FOR COMPLIANCE AND ENFORCEMENT UNDER THE HSNO ACT COMMENCE FOR LOCAL AUTHORITIES?

Compliance

As per Section 142 and Schedule 4 of the HSNO Act, each regional council and territorial authority will need to evaluate whether and when amendments to their respective planning documentation are necessary.

Also, with the transitional phase of the HSNO Act progressing, and hazardous substances increasingly being transferred to the HSNO Act, local authorities will need to ensure that minimum performance standards of the HSNO Act are met in the rules of any planning documentation and conditions to resource consents.

This has been covered extensively in Modules 5 and 6.

Enforcement

As mentioned, regional councils do not have a direct obligation to enforce the HSNO Act, unless this responsibility has been contracted to them by another enforcement agency.

For territorial authorities, most of the enforcement roles and responsibilities will not commence until the transitional provisions of the HSNO Act and the associated transfer of hazardous substances has been completed (except the provisions under the transferred regulations of the repealed Dangerous Goods Act).

This will occur in stages, and territorial authorities are obliged to observe this transfer process and the various stages of completion. The timeline for this has been outlined in Module 3. Updates are available from the ERMA New Zealand website.

However, enforcement of controls on hazardous substances approved since 2 July 2002 commences immediately, for premises not covered by other enforcement agencies. The numbers of these substances will obviously be very small to start of with, but will increase through time (details are on the ERMA website www.ermanz.govt.nz).



Notes
