

Module 6

Addressing HSNO and RMA responsibilities through resource consents

What

- overview of requirements for resource consent conditions for hazardous facilities in regional and district plans
- overview of consenting requirements for discharges to the environment
- overview of land use planning and consenting

Why

- to understand how new HSNO requirements affect consent conditions
- to identify any new consenting requirements under the HSNO Act for discharges to the environment
- to identify any new requirements under the HSNO Act for land use planning and consenting
- to identify how new HSNO provisions relate to existing resource consents

How

- presentation
- exercises
- case study
- group discussion



“Failure to prepare is preparing to fail”
John Wooden

Module 6

Addressing HSNO and RMA responsibilities through resource consents

6.1 LINKS BETWEEN HSNO PERFORMANCE STANDARDS AND RESOURCE CONSENT CONDITIONS

Overview

Module 5 focused on the requirements for regional and district plans under HSNO and RMA. Regional and district plans provide for activities which are either permitted, require a resource consent or are prohibited.

This module will focus on the conditions which apply to resource consents and how they relate to the HSNO performance standards.

HSNO and RMA links in relation to resource consents

Section 142 of the HSNO Act identifies that while a resource consent cannot be less strict than the bottom lines set under HSNO controls, a resource consent can set more stringent limits.

For example, a resource consent may set stricter standards to take into account local needs, such as a nearby school, high density community or sensitive receiving environment.

Section 142 HSNO also identifies that HSNO controls do not apply to existing resource consent conditions which address how an activity manages environmental effects and risk. This is further discussed below.



Notes

Existing resource consents

The types of existing resource consents identified in Section 142 (4) of the HSNO Act are:

- a land use consent relating to the storage, use, disposal, or transportation of any hazardous substance; or
- a coastal permit to do something that would otherwise contravene section 15 RMA; or
- a discharge permit.

HSNO controls do not apply to these existing resource consents until such time as the conditions on the resource consent are reviewed in accordance with section 128 RMA where the review clause refers to hazardous substances. With the Resource Management Amendment Act 2003, section 54 sets out an additional circumstance when consent conditions can be reviewed under section 128 RMA:

“(ba) in the case of a water, coastal, or discharge permit, when relevant national environmental standards have been made under section 43; or”

Resource consent conditions are also valid until such time when a consent expires and needs to be renewed. It is at the time of renewing the consent that new information under HSNO Act provisions can be used and stricter levels can now be set.

Implications on existing resource consents

Land use consents apply indefinitely and often do not specify review clauses. Therefore, Section 142(4) of the HSNO Act could be interpreted to mean that facilities could operate indefinitely without being subject to any HSNO controls.

However, the exemption specified in Section 142 (4) of the HSNO Act applies only to existing resource consents and to their context in terms of managing environmental effects and risks of a defined activity under the RMA.

Therefore, if a facility uses substances that exceed the HSNO thresholds, these hazardous substances will be subject to HSNO controls under the HSNO Act – whether or not it holds a land use or discharge resource consent – and these controls will be enforced separately under the HSNO Act.



Notes

Section 142 of the HSNO Act could also be interpreted to mean that if a facility holds a resource consent under the RMA, the site will not be subject to any controls once existing Acts (e.g. the Dangerous Goods Act) have been fully repealed by the HSNO transition period.

However the same situation applies as above in that if a facility uses substances that exceed the HSNO thresholds, then these hazardous substances will be subject to HSNO controls under the HSNO Act.

It is noted again that controls on “legally existing” hazardous substances will not apply until the various stages of the transitional phase of the HSNO Act have been completed.

Review of an existing consent

Section 128 RMA provides four ways that the conditions of existing resource consents can be reviewed:

- where a review condition is in the consent
- where a regional plan has become operative and the conditions need to be reviewed to meet the new rule i.e.: for a water, coastal or discharge permit
- in the case of a water, coastal, or discharge permit, when relevant national environmental standards have been made under section 43; (refer to the Resource Management Amendment Act 2003, section 54) or
- where information provided by an Applicant contained inaccuracies which materially influenced the decision, and more appropriate conditions are needed to address the effects of the activity.



Notes

Any consent conditions relating to a review should be specific in relation to the time and the purpose of the review, giving the local authority flexibility to undertake a review if appropriate (but not mandatory) by using the word, “may” (not “will”).

An example of a possible review clause for a regional council is set out below:

“The XXXXX Regional Council may in September 2004, September 2006, and September 2009, serve notice on the consent holder under section 128(1) of the RMA 1991, of its intention to review the conditions of this resource consent for the following purposes:

- *to review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from XXXX activity and if necessary to avoid, remedy or mitigate such effects by way of further or amended conditions; or*
- *if necessary and appropriate, to require the holder of this resource consent to adopt new standards set under the provisions of the HSNO Act; or*
- *to review the adequacy of, and the necessity for, monitoring undertaken by the consent holder.*

Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 RMA 1991”.



Notes

An example of a review clause for a district council is set out below:

“Pursuant to section 128 RMA, the Council may give notice in writing of its intention to review conditions XXX to XXX of this consent, to address any adverse effects on the environment from the consent holder’s activities in relation to hazardous facilities and substances. Such review may only be taken after a minimum period of two years from the date of completion of Stage XXX of the consent. The review shall be undertaken by a suitably qualified and experienced independent expert in hazardous substances approved by the Council, with the cost of review being shared equally between the consent holder and the Council, for the purpose of ensuring that adequate standards of environmental protection have been set to mitigate adverse effects being generated by the activity. The review shall also address any new information available under the provisions of the HSNO Act 1996. Subsequent reviews may be carried out five years from the date of the first review being completed.”

Each local authority will develop their own style of review clause that is both workable and legally defensible.

In the absence of any review clause, an existing activity can continue to operate under the existing resource consent conditions until such times as that consent expires and the activity needs to renew the consent, or the activity changes its scope or scale to a degree where a new consent is required. It is at the time of renewing the consent that new information under HSNO provisions can be used e.g.: stricter levels can now be set.



Notes

6.2 CONSENTING REQUIREMENTS FOR DISCHARGES TO THE ENVIRONMENT

Overview

Module 5 addressed regional council duties and functions in relation to managing hazardous substances. Regional plans can have rules which identify those activities which are permitted provided they meet minimum performance standards.

Those activities which fail to meet permitted activity status will require a resource consent, such as a coastal permit, discharge consent or certain types of land use activities. Where needed, conditions on resource consents will need to reflect the requirements for hazardous substances under the HSNO Act and the RMA as outlined in regional rules.

Regional plans will need to reflect that HSNO minimum performance standards cannot be exceeded by any activity involving hazardous substances. Specific focus will need to be placed on EELs and TELs (refer Module 4), as these form the bottom line for acceptable exposure levels in the environment.

Regional plan rules may, however, state that controls on activities involving hazardous substances can be stricter than that set by the HSNO Act, in particular levels for EELs and TELs set under the HSNO Act. This requirement may be reflected in the conditions to any resource consent for an activity involving hazardous substances.

Resource consents for hazardous facilities and substances

Where a resource consent is required for hazardous substances/facilities, the applicant will need to address the relevant regional plan provisions and performance standards. An Assessment of Environmental Effects (AEE) including a risk assessment is likely to be part of the application. The AEE is to be prepared in accordance with the Fourth Schedule of the RMA to identify such matters as the nature and scale of the proposal, potential environmental effects, mitigation measures and emergency/contingency measures.

The regulatory authority will use the regional plan provisions to evaluate consistency with objectives and policies and performance standards, including whether any HSNO performance controls, including EELs and TELs, are relevant. Further liaison with ERMA may be advisable to identify which controls or associated codes of practice are relevant.

The consent process includes consideration of appropriate conditions which are developed to address individual circumstances of the proposed operation and the site/environment. The resource consent conditions may address a range of matters to ensure that minimum performance controls under the HSNO Act are met, and impose additional controls imposed under the RMA where necessary, as follows:

- specification of environmental objectives for discharges and the receiving environment
- specific discharge rates, depths, concentrations, volumes
- specific storage requirements
- site design, construction and management
- hazard communication e.g. signage
- hazardous substances management plan
- hazardous waste management
- hazardous substances transport
- emergency management
- monitoring
- codes of practice
- requirements for reporting e.g. demonstrate compliance.

Any reference to a code of practice should identify the specific date and reference number, as codes of practice can change in the future.

Under section 44 of the Resource Management Amendment Act 2003, sections 104 to 106 RMA are repealed and replaced with new sections. The new section 105 relating to applications for a discharge permit or coastal permit requires the consent authority to have regard to section 104(1) matters and also the following:

“(a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

(b) the applicant’s reasons for the proposed choice; and

(c) any possible alternative methods of discharge, including discharge into any other receiving environment.”

A review condition pursuant to section 128 RMA should also be considered to address any subsequent provisions under the HSNO Act.

Where HSNO minimum performance standards are referred to in

resource consents – such as EELs and/or TELs (refer to Module 4) – it is noted that these may also be monitored under the HSNO Act by the relevant HSNO enforcement agency. For example, OSH is responsible for enforcing EELs and TELs in places of work.

Where relevant, the provisions of MARPOL should be considered for activities in the coastal environment. Refer to Module 3 for further details on MARPOL.



Notes

Review of resource consent conditions in light of HSNO requirements

Any review of a resource consent will need to ensure that HSNO minimum performance standards are met, including hazardous property and lifecycle controls (refer Module 3). Under the RMA, these controls can also be made more stringent. Some examples of this are shown below:

- EELs and TELs are set under the HSNO Act for hazardous substances which can discharge into the air, however, under the RMA stricter limits may be set due to the close proximity of a residential suburb, or sensitive receiving environment
- EELs and TELs set under the HSNO Act for hazardous substances that can discharge into water or into the ground and subsequently into groundwater may need stricter limits under RMA if the water flows into a sensitive environmental area or there is a concern with numerous contributors and the cumulative effects of discharges
- stricter levels than HSNO controls for discharge onto or into land may also be set under the RMA due to the sensitive nature of the receiving environment
- stricter levels than HSNO controls for hazardous substances in the coastal marine area may also be set under RMA, particularly where the preservation of the natural character of the coastal environment and outstanding natural features are concerned.

Resource consent conditions may also require contingency measures and emergency management provisions than those required by the HSNO Act. Consideration should also be given to the use of a review condition pursuant to section 128 RMA.

Examples of EELs and TELs are provided in Module 4 of this manual for environmental threshold levels and toxic substances.



Notes

6.3 LAND USE PLANNING AND CONSENTING

Overview

Territorial authorities address the majority of land use planning issues through the district plan in order to manage the effects on the environment generated by land use activities.

Modules 4 and 5 identified the methods available to control hazardous facilities and substances, including the HFSP, Classification of Hazardous Substances and Low/Medium/High threshold system, as well as minimum performance standards under the RMA.

The district plan must identify in the rules which are permitted activities and which activities require a resource consent. This involves determining for each land use zone or environmental area which activities are appropriate and what minimum performance standards are necessary. Any activity which is not permitted in a land use zone or exceeds the minimum performance standards will require a resource consent.

Each territorial authority must determine through the district plan preparation process and community consultation, whether or not a resource consent will be required for hazardous facilities in each land use zone.

The HSNO controls apply regardless of land use zone location, however more stringent provisions may be required under the district plan in sensitive environmental areas, or close proximity to schools and residential areas.

Resource consent procedures

Where a resource consent is required for a hazardous facility, the applicant will need to address general land use zone provisions and performance standards

These provisions will vary from district to district, but will generally require an applicant to consider the objectives, policies, general rules (noise, car parking, etc) and hazardous substance specific requirements (site design, protection of stormwater and sewerage systems, spill containment, underground storage, etc).



Notes

Hazardous facilities and risk

An Assessment of Environmental Effects (AEE), including a risk assessment, is likely to be part of the application and consent process for a hazardous facility under the RMA. For this reason, an understanding of the concepts and methods of risk management is important for those involved in all aspects of hazardous facility management.

The terms “hazard” and “risk”, although often used interchangeably, have distinct meanings:

Hazard describes physical situations, process and/or actions that have the potential to exert adverse effects on people, ecosystems and/or the built environment.

Risk is the likelihood of specified consequences of a specific event (eg, explosion) on people, ecosystems and/or the built environment. Therefore, the magnitude of risk is the product of probability and consequence ($\text{Risk} = \text{Probability} \times \text{Consequences}$).

All stages in the life cycle of hazardous substances present potential risks, as accidents such as structural failure of containment, operational malfunction or human error may result in unwanted release or loss of control in the form of explosion, fire and/or spillage.

These risks can be assessed and managed by working through the following risk management process:

- **Establish the context** by describing the nature, location, scale and timeframe of the proposed hazardous facility as well as strategic and organisational aspects such as legal obligations, relationships with stakeholders and company structure and responsibilities.
- **Undertake a hazard analysis** in a structured and systematic manner, using one or more of the tools available for this purpose:
 - site surveys and hazard audits
 - checklists
 - maps, drawings and overlays
 - networks
 - matrices
 - hazard and operability studies (HAZOP)

Hazardous facilities consent applications

The regulatory part of the process of establishing a hazardous facility should begin well before a consent is actually applied for. This process can be categorised as follows:

- consultation between the applicant and the regulatory authorities
- preliminary risk analysis to assess the scope of the assessment required
- identification of required expertise and consequent engagement of specialists (if necessary)
- preparation of the AEE in accordance with the Fourth Schedule of the RMA, addressing the following matters:
 - description of the nature and scale of the proposed facility as well as possible alternatives
 - outline of the AEEs scope
 - description of affected environments
 - summary and results of preliminary risk analysis
 - detailed hazard and risk assessment of on-site hazardous facilities
 - outline of hazardous waste management measures
 - transport of hazardous substances
 - description of proposed site management systems relating to hazardous substances
 - emergency preparedness measures
 - outline of the consultation strategy.
 - submission of consent application by the applicant
 - processing of the consent application in accordance with Part VI of the RMA by the regulatory authority.



Notes

***Development of
resource consent
conditions***

Once the application has been considered and the consent has been agreed to in principle, conditions to suit the individual circumstances of the operation need to be developed.

These will usually follow the minimum performance requirements set out in the district plan (including requirements for meeting the minimum performance standards of the HSNO Act), but may also include additional conditions in line with the nature and scale of the proposed facility.

Resource consent conditions may address the following matters:

- site design, construction and management, addressing such issues as:
 - spill containment systems
 - identification of stormwater drainage
 - separation requirements between facilities and the site boundary
 - emergency installations or equipment
- hazard communication, i.e., signage on the site and facilities
- hazardous substances management plan, covering:
 - site and process plans
 - monitoring and maintenance schedules
 - notification procedures and details for incident/accident reporting
 - emergency preparedness and response procedures
 - training and review procedures
- hazardous waste management, covering reduction measures, storage and disposal issues
- hazardous substances transport, on and off the site
- monitoring, covering:
 - hazardous substances inventories, inspection schedules for the site, storage areas and equipment
 - equipment performance testing
 - emergency procedures practice
 - training programmes
 - site audits
 - management system audits.
- codes of practice, which may be specified with regard to complying with specific consent conditions



Notes

- requirements for reporting includes provision of requested data to the regulatory authority to demonstrate compliance with consent conditions.

Review of resource consent conditions in light of HSNO requirements

Any review of a resource consent will need to ensure that HSNO minimum performance standards are met, including hazardous property and lifecycle controls (refer Module 3). Under the RMA, Resource consent conditions may also be more stringent. Examples of this include:

- storage areas controlled by HSNO minimum performance standards for separation distances between some substances may have greater separation distances imposed under RMA e.g. that part of the site the farthest away from the residential or school boundary is used for storage
- packaging and containment standards set under HSNO controls may have stricter requirements set under the RMA with additional containment measures required due to close proximity of a sensitive receiving environment or geothermal areas.
- labelling and signage is controlled by HSNO minimum performance standards, however additional signage may be required under the RMA to provide special warning and information signs for nearby community facilities, public areas, schools and in particular where children need to be warned of a hazardous facility site.

Resource consent conditions may also require additional contingency measures and emergency management provisions than provided by the standards under the HSNO Act.

It is also recommended to use a review condition pursuant to section 128 RMA for future provisions under the HSNO Act.

