

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY  
NGA KAIWHAKATUPATO WHAKARARU TAIAO



A QUICK GUIDE TO

***Conflict of Interest Issues for Test Certifiers***

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## **Background**

The Hazardous Substances and New Organisms (HSNO) Act 1996 Section 82, provides that a test certifier may issue a test certificate. This is qualified by stating several situations where a test certifier may not issue a test certificate (Section 82(3)). These relate to conflict of interest situations and are there to prevent the test certifier finding themselves compromised by a relationship or financial interest. The actual text of the Act reads:

*“A test certifier shall not issue any test certificate in respect of any matter if the test certifier is or has been responsible for, or has a financial interest in, the design, planning or construction of anything relating to the matter.”*

## **Legal position**

The guidelines in this paper are opinions on the legal interpretation of section 82(3) of the HSNO Act. A test certifier is advised to obtain their own legal opinion if there is any doubt as to the interpretation of the Act. Ultimately the test certifier is directly responsible for compliance with the relevant section of the Act, and the test certifier must ensure themselves that they are compliant with the legislation.

## **Situations of potential conflict**

There are three main situations where a test certifier is required to issue test certificates and are covered by these guidelines:

- ❖ Approved Handlers
- ❖ Hazardous Substance Locations
- ❖ Equipment and tanks

[This document does not cover pyrotechnic displays which are dealt with in separate guidelines.]

In issuing test certificates for these three situations ERMA NZ has anticipated a variety of circumstances where a test certifier could potentially find themselves in a conflict of interest. This does not, and cannot, cover all such circumstances and test certifiers may wish to consult with ERMA and/or their legal advisors for other circumstances.

The table below covers these circumstances in detail, but the following general principles can be applied:

1. A test certifier should not train a person, assess their competency, take money from them for the training and assessment, and then issue a test certificate based on this training and assessment (of the person’s knowledge and practical skills), unless there is some third party audit or moderation. This would require a formal approach such as NZQA.
2. If a test certifier owns, or has shares in a company (premises / equipment), they are not permitted to do any certification work for that company (premises / equipment). However, if they are an employee of a company they can, under certain circumstances, do certification work for that company.

## Notes to the table

1. Those circumstances marked with an asterisk \* are difficult to define as they can vary considerably. Legal advice is especially important for them.
2. “design” should be interpreted as providing more than mere advice on the design. It is a matter of degree and will vary according to the circumstance.
3. Training, in this context, means providing training in the key areas which are assessed, and then subsequently signed off by the test certifier.
4. Where the test certifier is the sole provider of a training course, and all/most aspects of the approved handler qualifications are obtained from the course, there is a much greater potential for conflict than if the course only covers a minor portion of the qualifications.
5. TC = Test Certifier  
AH = Approved Handler

Certificate Type	Sub type	Scenario for the Issue of the Test Certificate	Certificate issue permissible	Comment
<b>Hazardous Substance Location</b>	<b>1</b>	TC owns the premises	<b>No</b>	Financial interest
	<b>2</b>	TC is an employee who works at the premises	<b>No</b>	
		TC is an employee who works for another division of the company, or at Head Office, with separate reporting lines to the Chief Executive.	<b>Yes *</b>	Must demonstrate independence (Chinese Wall) from the operating division. Compliance monitoring should check for this.
		TC designed the premises/location that requires a test certificate.	<b>No</b>	Design interest
		TC gave general advice to the owner of the premises/location on the Regulations and/or Codes of Practice regarding means of compliance.	<b>Yes</b>	Providing the interest did not extend to the detailed design and/or building of the location.
<b>Equipment and Tanks</b>	<b>1</b>	TC owns the equipment	<b>No</b>	Financial interest
	<b>2</b>	TC is an employee who works for another division of the company, or at Head Office, with separate reporting lines to the Chief Executive.	<b>Yes</b>	Must demonstrate independence (Chinese Wall) from the operating division. Compliance monitoring should check for this.
		TC designed, installed or built the equipment	<b>No</b>	Financial and/or design interest
	<b>3</b>	TC gave advice to the owner of the premises/location regarding means of compliance.	<b>Yes</b>	Providing the interest did not extend to the detailed design and/or building of the location.

Certificate Type	Sub type	Scenario for the Issue of the Test Certificate	Certificate issue permissible	Comment	
Approved Handler	1	TC owns a company employing AHs and trains own staff as AHs	No	Financial interest	
	2	TC employed by the same company as the AHs and trains the staff as AHs.	(a) TC is part of the same division as the approved handlers. There is no audit or moderation of the training course.	Yes*	A qualified yes. There is potential for lack of independence and the TC would need to be sure they are not too involved with the course.
			(b) TC may or may not be part of the same division as the approved handlers but there is audit or moderation of the training course.	Yes	Audit or moderation would need to be external to the organisation, e.g. NZQA. Care still needed by the TC.
			(c) TC works for a different division of the company which reports directly (separately) to the Chief Executive. No audit or moderation.	Yes*	A qualified yes. Need to demonstrate independence within the organisation. Envisaged this would only work for a large organisation.
	3	TC employed by a training organisation that runs courses for AHs.	(a) TC designed and conducts the course. No audit or moderation of the course.	Yes*	Would only be possible in limited circumstances as there is potential for a lack of independence resulting from the absence of external audit. Care would be needed by the test certifier.
			(b) TC conducts the course but is not involved in the design. No audit or moderation of the course.	Yes*	Only marginally better than 3(a). A qualified yes but we would prefer an independent TC to certify the handler.
			(c) TC conducts the course. There is external audit or moderation of the course.	Yes	The TC can also have been involved in design of the course.
	4	TC owns a training organisation, designs and run courses for AHs. No audit or moderation of the course.	No	Lack of independence due to financial involvement.	
	5	TC personally knows the applicant	Yes	Providing the other requirements of independence are met.	
	6	Course designed, run and assessed independently of the TC.	Yes	TC sent evidence of course assessment and issues certificate independently of the course.	

**Other Guidelines in this series**

*Becoming a Test Certifier*

*What do I need to know to be a Test Certifier*

*Completing a Location Certificate*

*Certificates for Approved Handlers*

*Your 'Working' Arrangements with ERMA NZ*

*Professional Indemnity*

