

September 2021

Hazardous substances located near property boundaries

Purpose

This position sets out when you, as a person conducting a business or undertaking (PCBU), need to get an agreement with your neighbour, as required by regulation 9 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations), and when we recommend you get one.

This position explains:

- why you should contain separation distances for your hazardous substances within your property boundary
- when you need to have neighbour agreements and when we recommend them
- how neighbour agreements can help manage risks, and
- what neighbour agreements should contain and who they should be with.

By 'neighbour agreement' we mean a written agreement between the PCBU with management and/or control of a property holding hazardous substances and the owner or person with management and/or control of the neighbouring property.

Separation distances

The Regulations require separation distances between hazardous substances and certain points, places, or other hazardous substances (places). This includes ignition sources, transfer points, incompatible substances, and public and protected places.

The Regulations require these separation distances to help reduce the risk of harm. This is a control to prevent and minimise the effects of unintended ignition, combustion, or explosion.

Separation distances should be maintained within property boundaries

To help reduce the risk of harm, you should ensure separation distances required for your hazardous substances are contained within your property boundary. Containing the separation distance within your property boundary helps to ensure:

- the areas around the hazardous substance are appropriately managed, maintained, and controlled, and
- everyone near the hazardous substance understands the risks associated with it.

Ensuring that the separation distance is contained within your property boundary also gives you more control and certainty over the future of your site. This is because you are not reliant on your neighbour and what they are doing with their site.

If your separation distance isn't contained within your property boundary, then you may need to move your hazardous substance, or change your operations, if changes to the use of your neighbour's property in future result in your site becoming non-compliant.

If the separation distance can't be contained within the property boundary

If a separation distance that could be required by the Regulations can't be contained within your property boundary, you need to consider if you are required to obtain agreement from your neighbour.

When a neighbour agreement is required

Under regulation 9 of the Regulations, you're required to have an agreement if the separation distance required between the hazardous substance and a place it needs to be separated from extends beyond the boundary of the property where the hazardous substance is located. This is required regardless of whether the neighbouring property is privately or publicly owned, and regardless of where on the neighbouring property the place your hazardous substance needs to be separated from is located.

Regulation 9 neighbour agreements are a regulatory requirement. Compliance certifiers may check if a current neighbour agreement is in place.

When a neighbour agreement is recommended

We also recommend you obtain a neighbour agreement if the quantity of hazardous substances could attract a separation distance that would extend beyond the property boundary, even if there's not currently a place on the neighbouring property the hazardous substance needs to be separated from.

Working out whether a neighbour agreement is required or recommended

When deciding if you need to obtain a neighbour agreement, you need to determine:

1. The separation distance(s) that could be required between the hazardous substance and a place it would need to be separated from, regardless of if such a place is present.
2. The area around the hazardous substance that is within this separation distance(s) that could be required.
3. If this area extends beyond your property boundary.
4. If this area does extend beyond your property boundary, you then need to consider if there is a relevant place on the neighbouring property the hazardous substance needs to be separated from. If:
 - a. there is, then a neighbour agreement is required under regulation 9
 - b. there isn't, then a neighbour agreement is not required under regulation 9, but we recommend you obtain one anyway.

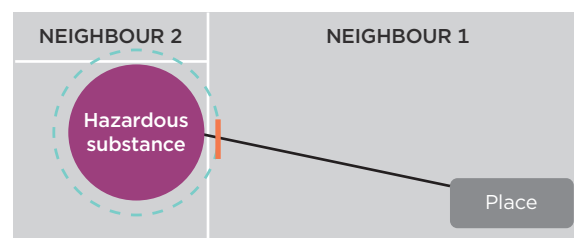
If you're not sure if there's a place on the neighbour's property your hazardous substance needs to be separated from, we recommend you talk to your neighbour. If you're still unsure then we recommend you obtain a neighbour agreement anyway. This can help to manage risks.

As your circumstances change or the use of your neighbour's property changes, the requirement for a neighbour agreement might also change. You should regularly consider whether an agreement is required, and ensure any agreements you have remain current.

Example

In the example below, the dotted circle represents a separation distance that could be required for the hazardous substance. The red line represents the most direct line between the hazardous substance and the place it needs to be separated from, and the red arrow represents how far the required separation distance extends along this line. In this example, a neighbour agreement is:

- **required** with Neighbour 1, as the separation distance extends beyond the property boundary and there is a place on Neighbour 1's property that the hazardous substance needs to be separated from
- **recommended** with Neighbour 2, as the separation distance that could be required extends beyond the property boundary, but there isn't currently a place on Neighbour 2's property the hazardous substance needs to be separated from.



What should the agreement contain?

We don't provide detailed advice on what neighbour agreements should say. In general, we recommend that neighbour agreements cover:

- how the risks within the separation distance will be managed on the neighbouring property
- how the PCBU with management and/or control of the hazardous substance will support the management of risks associated with their hazardous substance
- how much notice the neighbour should give regarding an intended change to the use of their property, and
- how often the agreement will be reviewed.

Who should the agreement be with?

Regulation 9 specifies that PCBUs should obtain neighbour agreements from the owner, lessee, sub-lessee, occupier, or person in possession of any property beyond the boundary.

In practice, when determining who to obtain an agreement with, we expect you to consider who has control over the use of the neighbouring property and who needs to know about the risks and how they will be managed.

It may be appropriate to obtain a neighbour agreement with both the owner and occupier of the neighbouring property.

Limitations of neighbour agreements

Your neighbour doesn't have to agree to your separation distance extending into their property.

If they do agree, you remain responsible for managing the risks associated with your hazardous substance. A neighbour agreement can help clarify how any risks will be managed. Where relevant, your neighbour is responsible for managing the risks associated with their business or undertaking, so far as is reasonably practicable, including within separation distances that extend into their property.

Despite having an agreement with your neighbour, the use of the neighbouring property could change. This could lead to your site becoming non-compliant and your hazardous substance needing to be moved.

We recommend this is considered when you're deciding on your site layout, and that you contain separation distances within your property boundary.

Further information

More information can be found in the:

- [Health and Safety at Work Act 2015](#)
- [Health and Safety at Work \(Hazardous Substances\) Regulations 2017](#)