

- for the storage of fuel. The storage, handling or use of hazardous substances meeting the definition of a Major Hazard Facility were classified as:
- a. Non-complying activity in the Residential, Country Living, Village or Rangitahi Peninsula Zones; and
 - b. Discretionary activity in all other zones;
- 4.11 Any new storage or use of hazardous substances with explosive or flammable intrinsic properties within 12 metres of the centre line of a National Grid Transmission Line was a non-complying activity. The storage, handling or use of hazardous substances that do not meet the definition of Major Hazard Facility is a permitted activity.
- 4.12 A number of the parties provided feedback on our revised draft provisions, including the following:
- a. Fire and Emergency New Zealand;
 - b. Genesis Energy;
 - c. The Oil Companies;
 - d. Ports of Auckland;
 - e. LPG Association; and
 - f. Ms Overwater.
- 4.13 Having considered the detailed evidence from submitters and the feedback on our draft revised set of provisions for managing hazardous substances, we consider that our draft is the more appropriate approach (with minor amendments as we discuss below). We consider that the revised provisions effectively manage hazardous substances in a clear and concise manner without unduly constraining normal activities such as farming.
- 4.14 We agree with the Oil Companies and POAL that the term “Significant Hazardous Facility” will avoid potential confusion with the definition of major hazard facility used in the Health and Safety at Work (Major Hazard Facilities) Regulations 2016. We do not agree with Ms Overwater that the term “manufacture” should be deleted from Objective 10.1.1 as is it not just the subsequent use, storage and disposal of hazardous substances that presents risk. We agree with the Oil Companies and POAL who requested the deletion of the term “transportation”. We note that the definition of “major hazard facility” explicitly excludes the transport of hazardous substances and consider that the PDP has limited ability to control the transport of hazardous substances in any event.
- 4.15 We have amended the volumes of petrol and diesel in response to the comments from the Oil Companies and POAL and focused only on above ground storage to avoid duplication with other documents / processes. We agree with Mr Lindenberg that the defined term “use” should instead be “use of hazardous substances” to provide additional clarity.

- 4.16 Having made these amendments, we consider that the following two objectives are the most appropriate way to achieve the purpose of the RMA:

10.1.1 Objective

To protect the community and natural environment from the adverse effects associated with the manufacture, use and storage of hazardous substances.

10.1.2 Objective

To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

- 4.17 We consider that these objectives will protect the health and safety of people and the community. The objectives strike a balance between protecting the natural and physical resources, while providing for the economic and social well-being that comes from using hazardous substances. The objectives will assist in achieving Section 5(2)(c) of the RMA, particularly as Objective 10.1.1 seeks to protect the community and natural environment from the adverse effects arising from hazardous substances.
- 4.18 We consider that the policies and rules are the most appropriate way to achieve the two new objectives, having considered all the options open to us. We are satisfied that the revised provisions avoid duplication of other hazardous substances legislation and regulation, and appropriately manages the effects of the use, storage or disposal of hazardous substances, where those effects are not appropriately controlled by existing legislation and regulations. We consider this approach to be the most efficient and effective way to achieve the objectives.

Contaminated land

- 4.19 Turning to contaminated land, we have inserted introductory text at the start of the chapter to explain the relationship with the NESCS. We agree with FFNZ's suggestion to include "from unacceptable risk" at the end of Objective 10.2.1 as this makes it clear what human health and the environment is being protected from. We do not see the need to include the word "sustainably" as sought by WRC, and instead have amended the objective to focus on preventing the risks to human health and safety and the environment in the first instance, and in any event reduce the risk to acceptable levels. We agree with the Waikato District Health Board who sought to include the words "and safety" in Objective 10.2.1. We agree that this addition better reflects the purpose of the RMA. With regards to the proposal by Waikato Tainui to require a bond to cover liability and ensure that contaminated land is remediated following use, we do not consider it necessary to include that in the objectives or policies for contaminated land.
- 4.20 However, we are concerned with any wording that requires risk to be prevented, because that is not always achievable in practice. Instead, we have reworded the objective to read as follows:

10.2.1 Objective – Contaminated land

(a) The subdivision, use and development of contaminated land is managed to prevent, as far as possible, and, in any event reduce to acceptable levels, the risks to human health and safety and the environment.

- 4.21 We have made a number of amendments to Policy 10.2.2 in response to submissions as follows:
- a. Recognising that remediation is a form of management of contaminated land in clause (a);
 - b. Given the NESCS covers preliminary site investigations, we agree with the amendments sought by WRC to refer to “actually or potentially” contaminated land. For similar reasons we have recognised preliminary site investigations as a management approach;
 - c. Recognition of the potential adverse effects on human health “and safety” to better reflect section 5 of the RMA;
 - d. We agree with WRC that the policy would benefit from an additional clause requiring plans to be prepared in accordance with the Ministry for the Environment’s Contaminated Land Management Guidelines; and
 - e. Refined the wording in places to improve clarity.
- 4.22 We agree with Ms Overwater that the recommended amendments to Policy 10.2.2 are more aligned with the NESCS and provide an effective and efficient policy framework that supports the provisions contained within the NES. We consider that the amendments will result in Policy 10.2.2 achieving Objective 10.1.1 in a more appropriate way.

5 Conclusion

- 5.1 Having considered the submissions, section 42A reports and evidence presented to us, we are satisfied that the amended provisions for Chapter 10 relating to hazardous substances and contaminated land (as included in **Attachment 1** to this Decision) will provide a more suitable framework than the notified provisions, and more appropriately achieve the purpose of the RMA and give effect to the RPS.

For the Hearings Panel



Dr Phil Mitchell, Chair

Dated: 17 January 2022

Attachment I: Amendments to Chapter 10: Hazardous Substances and Contaminated Land

10.1 Hazardous Substances

The use of hazardous substances in New Zealand is primarily managed by the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Health and Safety at Work Act 2015 (HSW Act) and relevant regulations.

Because the district plan seeks to avoid duplication of requirements and obligations that arise under other legislation and regulations, the provisions of this chapter are designed to manage the effects of use, storage, or disposal of hazardous substances, only to the extent that those effects are not within the ambit of existing legislation and regulations.

10.1.1 Objective

To protect the community and natural environment from the adverse effects associated with the manufacture, use and storage of hazardous substances.

10.1.2 Objective

To enable activities to utilise hazardous substances where necessary for their operations, in appropriate locations.

10.1.3 Policy

Ensure that activities are able to utilise hazardous substances in compliance with relevant regulation as necessary to their operation, without being compromised by 'reverse sensitivity' (that is, by residential or other sensitive activities moving closer and seeking higher amenity levels, including reduced risks from hazardous substances).

10.1.4 Policy

Ensure that significant hazardous facilities are appropriately sited and managed in order to reduce risks to the environment and community to acceptable levels.

10.1.5 Policy

Avoid any unnecessary duplication of regulation between the Hazardous Substances and New Organisms Act 1996, the Health and Safety at Work Act 2015 and relevant regulations, and the District Plan.

~~10.1.1 Objective – Effects of hazardous substances~~

~~(a) Residual risk associated with the storage, use, or disposal of hazardous substances is managed to ensure that the effects on people, property and the environment are acceptable, while recognising the benefits of facilities using hazardous substances.~~

~~10.1.2 Policy – Location of new hazardous facilities~~

~~(a) New hazardous facilities minimise the risk to the environment (including people and property) to acceptable levels by:~~

- ~~(i) Siting new hazardous facilities in appropriate locations that are separated from incompatible activities and environment;~~
- ~~(ii) Avoid locating near to sensitive land use activities and infrastructure~~
- ~~(iii) Designing, constructing and operating hazardous facilities in a manner that ensures the adverse effects of the operation or an accidental event involving hazardous substances can be contained within the site; and~~
- ~~(iv) Disposing hazardous wastes to authorised disposal or treatment facilities that have appropriate management systems in place.~~

10.1.3 Policy – Residual risks of hazardous substances

- ~~(a) Facilities for the use, storage or disposal of hazardous substances shall identify and assess potential adverse effects (including cumulative risks and potential effects of identified natural hazards) to prevent unacceptable levels of risk to human health, safety, property and the natural environment.~~

10.1.4 Policy – Reverse sensitivity effects

- ~~(a) Separate sensitive land use activities from lawfully established hazardous facilities;~~
~~(b) Separate new hazardous facilities from existing sensitive land use activities; and~~
~~(c) Avoid the storage, processing or disposal of hazardous waste in sensitive environments.~~

10.2 Contaminated Land

Land can become contaminated when hazardous substances are used, stored or disposed of inappropriately.

This plan identifies potentially contaminating activities and industries by reference to the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) and does not identify specific sites within the district.

10.2.1 Objective – Contaminated land

- (a) The subdivision, use and development of contaminated land is managed to protect prevent, as far as possible, and, in any event reduce to acceptable levels, the risks to human health and safety and the environment.

10.2.2 Policy – Managing the use of contaminated land

- (a) Contaminated land is managed (which may include remediation) ~~or remediated~~ to ensure that contaminants are at a level acceptable for the proposed land use.
- (b) Disposal of contaminated soil ~~must be~~ is carried out in a manner that avoids further adverse effects on human health and safety or on the environment.
- (c) Use or development of contaminated land ~~must~~ does not damage or destroy any contaminant containment works, unless comparable or better containment is provided, or monitoring demonstrates that the containment is no longer required.
- (d) Ensure that contaminated land management approaches associated with the use, subdivision and development of actual or potentially contaminated land management approaches includes, to the extent necessary where appropriate:
- (i) ~~undertaking a site investigations being undertaken of any land identified as actually or potentially contaminated,~~ prior to any new subdivision or change of use of land use that could result in an increase in any adverse effects of land contamination;
 - (ii) remedial action plans;
 - (iii) site validation reports;
- and
- (iv) site management plans as appropriate for identifying, monitoring and managing contaminated land.
- (e) All site investigation reports, remedial action plans, site validation reports and ongoing site management plans are prepared in accordance with the Ministry for the Environment's Contaminated Land Management Guidelines #1 and #5, and are provided to both Waikato District Council and Waikato Regional Council for their records.

10.3 Rules for Hazardous Substances

Rule 10.3.1 – Hazardous Substances in All Zones

<u>RULE</u>	<u>LAND USE ACTIVITIES</u>
<u>PI</u>	<u>The storage, handling or use of hazardous substances except where Rule 10.3.1 DI, or Rule 10.3.1 NCI, or 10.3.1 NC2 apply.</u>
<u>DI</u>	<u>The storage, handling or use of hazardous substances in a Significant Hazard Facility.</u>
<u>NC1</u>	<u>Significant hazard facility in the General Residential, Medium Density Residential, Large Lot Residential, Rural Lifestyle, Settlement or Rangitahi Peninsula Zones.</u>
<u>NC2</u>	<u>Any new storage or use of hazardous substances with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line.</u>

10.3.2 Assessment criteria for discretionary activities

For discretionary activities, the following criteria identify those matters which Council may assess the activity against. However, for discretionary activities Council's assessment is not restricted to these matters:

1. Risk assessment comprising:

- (a) The probability and potential consequences of an accident leading to the release or loss of control of hazardous substances.
- (b) Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities, educational facilities and community facilities.
- (c) Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of potable water.
- (d) Potential risks and effects on sites of significance to tangata whenua, sites of historical or archaeological significance and Outstanding Natural Features and Landscapes.
- (e) The potential for natural hazards to impact on the operation of the hazardous facility.
- (f) The potential for cumulative adverse effects of hazardous substances.

2. Alternative locations:

An assessment of alternative locations, having particular regard to locations both within the site and outside the site.

3. Records for existing activity:

The record of compliance and acceptable risk management of any existing activity where expansion of an existing activity is proposed.

Appendix 5: Hazardous Substances

Amendments to Chapter 13: Definitions

Definitions – relating to hazardous substances

<p><u>Hazardous substance</u></p>	<p>Has the same meaning as in section 2 of the RMA.</p>
<p><u>Significant hazard facility</u></p>	<p><u>Significant Hazard Facility:</u></p> <p><u>Means any facility which involves one or more of the following activities:</u></p> <ul style="list-style-type: none"> • <u>Manufacturing and associated storage of hazardous substances (including industries manufacturing agrochemicals, fertilisers, acids/alkalis or paints)</u> • <u>Oil and gas exploration and extraction facilities</u> • <u>Purpose built bulk storage facilities for the storage of hazardous substances (other than petrol, diesel or LPG) for wholesale or restricted commercial supply</u> • <u>The aboveground storage/use of more than 50,000L of petrol</u> • <u>The aboveground storage/use of more than 100,000L of diesel</u> • <u>The storage/use of more than 6 tonnes of LPG</u> • <u>Galvanising plants</u> • <u>Electroplating and metal treatment facilities</u> • <u>Tanneries</u> • <u>Timber treatment</u> • <u>Freezing works and rendering plants</u> • <u>Wastewater treatment plants</u> • <u>Metal smelting and refining (including battery refining or recycling)</u> • <u>Milk treatment plants</u> • <u>Fibreglass manufacturing</u> • <u>Polymer foam manufacturing</u> • <u>Asphalt/bitumen manufacture or storage</u> • <u>Landfills</u> <p><u>For the avoidance of doubt, the following activities are not significant hazard facilities:</u></p> <ul style="list-style-type: none"> • <u>The incidental use and storage of hazardous substances in minimal domestic-scale quantities</u> • <u>Retail outlets for hazardous substances intended for domestic usage (e.g., supermarkets, hardware stores and pharmacies)</u> • <u>The incidental storage and use of agrichemicals, fertilisers and fuel for land based primary production activities.</u> • <u>Pipelines used for the transfer of hazardous substances such gas, oil, trade waste and sewage</u> • <u>Fuel in motor vehicles, boats, airplanes and small engines</u>

	<ul style="list-style-type: none"> • <u>Military training activities</u> • <u>The transport of hazardous substances (e.g., in trucks or trains)</u>
<u>Use of hazardous substances</u>	<p>Means with respect to a hazardous substance, the manufacturing, processing or handling of a hazardous substance for a particular activity without necessarily changing the physical state or chemical structure of the hazardous substance involved. This <u>It</u> includes mixing, blending and packaging operations, or the use of a hazardous substance as a cooling or heating medium. It does not include <u>excludes</u> the filling or drawing of a hazardous substance from bulk storage tanks unless the processing is permanently connected to the bulk storage, and does not include <u>excludes</u> loading out and dispensing of petroleum products.</p>