

7.7 HAZARDOUS SUBSTANCES AND CONTAMINATED LAND

7.7.1 BACKGROUND

- (1) Hazardous substances are used by the agriculture, horticulture, forestry and industrial sectors, as well as the domestic sector (but usually only in small amounts). As such, hazardous substances are a common and important part of modern life. If properly handled, used, stored and disposed of, the risks to the environment and to human health and safety are very small. However, there are many examples both in New Zealand and internationally that illustrate the effects of accidents and inappropriate use, storage, transportation and disposal of hazardous substances.
- (2) Section 31(1)(b) of the Resource Management Act 1991 imposes a duty on district councils to control any actual and potential effects of the use, development or protection of land. This includes preventing or mitigating any adverse effects of the storage, use, disposal or transportation of hazardous substances (Section 31(1)(b)(ii)) and preventing or mitigating any adverse effects of the development, subdivision, or use of contaminated land (Section 31(b)(iia)).
- (3) This is complemented by the functions given to the regional councils under Section 30(1)(c)(v) and 30(1)(ca) of the Act to also prevent or mitigate any adverse effects of the storage, use, disposal, or transportation of hazardous substances, and to undertake the investigation of land for the purposes of identifying and monitoring contaminated land.
- (4) The Waikato Regional Policy Statement identifies that both regional and district plans will be used as one of the methods to avoid the adverse effects of the storage, use and disposal of hazardous substances, and ensure consistent, efficient and effective approaches to the remediation and management of contaminated sites.
- (5) With respect to this District Plan, the primary implementation method is generally the development of rules (regulation). In providing these rules, some of the other implementation methods will also come into play. Council recognises that a range of methods are presently and will continue to be used to control and manage the effects of hazardous substances. Many of these methods are outside the District Plan and under other legislation. Waikato Regional Council has indicated that its focus will be on the prevention and minimisation of risk to the environment and human health, through the provision of information, advocacy, coordination between agencies, provision of services and financial instruments.
- (6) Rules and other provisions in the District Plan can assist in avoiding, remedying or mitigating the adverse effects of hazardous substance activities in terms of the location of activities (especially in relation to sensitive environments or activities), protecting the main traffic routes from development that would reduce the road's safety and efficiency for transportation purposes and ensuring that appropriate performance standards are included that can be complied with.
- (7) One of the major environmental tasks to be addressed is the "clean up" of existing contaminated land. A National Environmental Standard (NES) for Assessing and Managing Contaminants in Soils came into force on 1 January 2012 to ensure that land affected by contaminants in soil is appropriately identified and assessed at the time of being developed

and if necessary remediated, or the contaminants contained, to make the land safe for human use. The NES prescribes:

- Controls that direct the requirement for resource consent or otherwise for activities and subdivision on contaminated land or potentially contaminated land.
- Methods for establishing applicable numerical standards for contaminants in soil.
- Use of established best practice guidelines for investigating and reporting on contaminated or potentially contaminated land.

7.7.2 RESOURCE MANAGEMENT ISSUES

- (1) The handling, transport, storage, use and disposal of hazardous substances can pose a risk to the environment and to human health and safety if not appropriately managed.
- (2) The use and development of land containing contaminated soils can lead to environmental effects if the contaminants are not identified and the land is not remediated to make it environmentally sound and safe for human use.

7.7.3 OBJECTIVES AND POLICIES

(1) OBJECTIVE 1

To avoid, remedy or mitigate the risk of adverse effects to the environment and the community, associated with the transportation of hazardous substances.

(a) Policies

Objective 1 will be achieved by implementation of the following policies:

- (i) Ensure that adverse effects of activities on the efficiency and safety of the transport routes are avoided, remedied or mitigated (eg through access design, location and formation).
- (ii) Provide for the use, manufacture and storage of hazardous substances in locations that are readily able to gain access to the main transport routes. Where possible the hazardous facility should be located to avoid the need for transport carrying the hazardous substance to regularly pass through residential areas and other urban areas (excluding Industrial zones).
- (iii) Make one of the matters to be considered, when assessing an application for a resource consent for using or storing hazardous substances, the risks associated with the transportation of the substance to the site.
- (iv) Ensure that the routes used in the transportation of hazardous substances are maintained to a standard that seeks to minimise the risk of accident as a result of the road design, formation, sign posting and other road factors.

(b) Reasons

- (i) The control of the actual transportation of hazardous substances rests principally with the Commissioner of Police and the New Zealand Transport Agency under the Hazardous Substances and New Organisms Act 1996 (HSNO), not with the District Council.
- (ii) The District Plan has a role to play in protecting the transportation resource from the adverse effects of other adjoining activities.

(2) OBJECTIVE 2

To minimise the risks of adverse effects to the environment and the community associated with the use and storage of hazardous substances.

(a) Policies

Objective 2 will be achieved by implementation of the following policies:

- (i) Requiring that the location of sites on which hazardous substances can be stored and on which those facilities that involve the use of hazardous substances can operate should be separated from environments that would be adversely affected by the inadvertent release of hazardous materials.
- (ii) Making the risks to the environment and community associated with the hazardous facility one of the matters to be considered when assessing an application.

(b) Reasons

- (i) The potential adverse effects from the use and storage of some hazardous substances are such that in some locations (eg residential, wetlands, reserves) the risk to the environment, amenity and public health and wellbeing should be avoided.

(3) OBJECTIVE 3

To minimise the risk of adverse effects on the environment and the community from contaminated land and the disposal of hazardous substances that occurred in the past, and that will occur in the future.

(a) Policies

Objective 3 will be achieved by implementation of the following policies:

- (i) Exclude the disposal of hazardous substances from the provisions for general excavation and fill.
- (ii) Ensure that contaminated land is managed in such a way to either avoid subdivision, use or development of land that presents a significant risk to health, safety or the environment, or to ensure that land is managed so that any potential risks are at acceptable levels for the proposed land use and the environment. This will occur in conjunction with the Regional Council.

- (iii) Discourage the disposal of any hazardous substance anywhere in the District, apart from authorised sites.
- (iv) Promote the establishment of facilities outside the District to safely dispose of hazardous substances, where such facilities are not provided in the District.

(b) Reasons

- (i) The integrated action of both Regional and District Councils will ensure that contaminated land is appropriately managed throughout the District.
- (ii) The District Plan needs to give a clear message that the disposal of hazardous substances is not encouraged or provided for.

(4) OBJECTIVE 4

To increase the level of public and user knowledge, education and involvement in minimising the use of hazardous substances and the safe and correct methods of the use, storage and disposal of hazardous substances.

(a) Policies

Objective 4 will be achieved by implementation of the following policies:

- (i) To identify and promote suitable industrial standards and Codes of Practice to prevent or mitigate environmental effects and risks associated with hazardous substances and environmentally damaging substances and facilities.
- (ii) Continue to work with organisations (eg Waikato Regional Council, District Health Board, New Zealand Police, New Zealand Chemical Industry Council) and in forums (eg Hamilton Hazardous Substances Technical Liaison Committee) that seek to inform and educate the specific users and the public in general on the ways in which to minimise the use of and the risks associated with hazardous substances.
- (iii) To promote land uses and land use practices which avoid, remedy or mitigate adverse effects from the use of hazardous substances while enabling maximum benefit to be derived from use of such substances.

(b) Reasons

- (i) A range of methods is required to inform and educate the public and users of the risks and effects of hazardous substances.

(5) OBJECTIVE 5

To assist in the coordination of the agencies responsible for the control and management of hazardous substances.

(a) Policies

Objective 5 will be achieved by implementation of the following policies:

- (i) Continue to be part of and support the statutory and non statutory bodies (such as Environmental Risk Management Authority (ERMA), Department of Labour, Gas

Association of NZ) with a responsibility for or an interest in the minimisation of the use of and risks associated with hazardous substances.

- (ii) Encourage consultation with those persons with an interest in, or who are affected by a resource consent application.

(b) Reasons

- (i) The control and management of hazardous substances is the responsibility of a number of organisations, and coordination amongst the agencies is required to ensure that resources are not wasted due to duplication of effort, and the appropriate agencies are notified.
- (ii) While accepting that the methods of education, information sharing and advocacy are outside the role of the District Plan, the use of rules in the District Plan can enable these other methods to be used.

7.7.4 ENVIRONMENTAL RESULTS

- (1) The minimisation of adverse effects from the use, storage, disposal and transportation of hazardous substances on the environment and human health.
- (2) In conjunction with the responsibilities and work undertaken by other agencies, increased awareness and knowledge of hazardous substances, resulting in the risks and effects on the environment being reduced, and achieving the integrated management of hazardous substances.

7.7.5 ACTIVITIES

(1) INTRODUCTION

Council has adopted the "Hazardous Facilities Screening Procedure" (HFSP) contained in the document titled "Land Use Planning Guide for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facilities Operators, Ministry for the Environment (February 2002)" as the approach to managing *hazardous facilities*. This document focuses on assessing potential adverse effects of three kinds:

- (a) effects caused by fire and/or explosion;
- (b) effects on human health;
- (c) environmental effects.

- (2) Possible adverse effects of *hazardous substances* can be predicted by the level of *hazard* of the substance and the anticipated consequences of its release. Adverse effects include:

- (a) contamination of water, soil and air;
- (b) short and long term damage to ecosystems;

- (c) accumulation of persistent substances in the bodies of humans and animals, resulting in chronic and/or long term damage to their health;
 - (d) acute damage to human health through exposure to substances affecting skin, mucous membranes, respiratory, digestive and other systems;
 - (e) damage to the *environment* from fire or explosion events;
 - (f) damage to human health and property from fire or explosion events.
- (3) In order to assess the *hazard* posed by various substances and the risk they present, *Council* has adopted the HFSP for use in assessing *hazardous* activities or *facilities*.
- (4) **HAZARDOUS FACILITY SCREENING PROCEDURE ('HFSP')**
- (a) The HFSP will be applied to all proposed new *hazardous facilities* using or storing *hazardous substances*.
 - (b) Existing facilities will not be subject to the HFSP unless they significantly expand or alter their operations. A significant alteration occurs when the effects of the use are not the same or similar in character, intensity or scale as previously, as defined by Sections 10, 10A and 20A of the Resource Management Act 1991. It is unlikely that the replacement of tanks or other equipment would attract screening by the HFSP unless this would enable a considerable increase in the storage or use of *hazardous substances*.
 - (c) The HFSP will be used as a screening tool to assist in making decisions on:
 - (i) whether a proposed *hazardous facility* is permitted, subject to defined minimum performance standards; or
 - (ii) whether it requires a consent and additional, merit-based assessment of risks.
 - (d) Activities involving radio-active sources are excluded from the HFSP assessment process, because they are covered under the rules of the Radiation Protection Regulations 1982. These Regulations are administered by the Ministry of Health through the National Radiation Laboratory.
- (5) **CONTAMINATED LAND**
- (a) The National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 applies to assessing and managing the potential adverse effects of contaminants in soil on human health, from particular activities. Those activities comprise *subdivision*, land use change, soil disturbance, soil sampling or removing and replacing fuel storage systems. Any activity which is the subject of the NES is required to comply with the gazetted regulations. Where compliance with *permitted activity* provisions of those regulations cannot be achieved, resource consent is required to be obtained. *Council* is responsible for observing and enforcing the provisions of the NES.

Note:

- (i) For information purposes a copy of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, is included in Appendix 7.7A in Section 7.7.15. Users should refer to the latest version of this legislation.
- (ii) The District Plan does not contain *rules* that address *contaminated land* provisions to the extent addressed by the NES, or for any other purpose not otherwise covered in the NES.

7.7.6 PERMITTED ACTIVITIES

- (1) The following are *Permitted Activities* in all *zones* and shall comply with the Performance Standards specified in Rule 7.7.13 below:
 - (a) Any *hazardous facility* with an Effects Ratio that equals or falls below the Effects Ratio (R) specified for the *zone* in which it proposes to locate, as indicated in the HFSP Consent Status Matrix in Rule 7.7.12(5) below.
 - (b) The co-disposal of *hazardous substance* to a *landfill* operation, but only where:
 - (i) the *landfill* is operating under a resource consent or a requirement that provides for the disposal of *hazardous substances*
 - (ii) the *hazardous substance* is listed as being permitted to be disposed of in the *landfill*
 - (iii) the *hazardous substance* is within the quantities and concentrations permitted in the *landfill*
 - (iv) the disposal is undertaken and completed in accordance with the *conditions* controlling the *landfill* operation.

Note: Refer to the exemptions in Rule 7.7.14.

7.7.7 CONTROLLED ACTIVITIES

- (1) There are no *Controlled Activities*.

7.7.8 RESTRICTED DISCRETIONARY ACTIVITIES

- (1) The following are *Restricted Discretionary Activities* in all *zones* and the *Council* will restrict the exercise of its discretion to the relevant matters listed in (2) below:
 - (a) Any *hazardous facility* with an Effects Ratio above the Effects Ratio (R) specified for the *zone* in which it proposes to locate, as indicated in the HFSP Consent Status Matrix in Rule 7.7.12(5) below.
 - (b) Facilities for the disposal of *hazardous substances* within the Rural Zone.

- (c) Co-disposal of *hazardous substances* to a *landfill* operation, not provided for as a *permitted activity* in Rule 7.7.6(1)(b).
- (d) The storage of petrol, diesel and LPG as part of the operation of *service stations* where the following are complied with:
 - (i) Storage of between 100,000 litres and 200,000 litres of petrol in underground storage tanks;
 - (ii) Storage of between 50,000 litres and 120,000 litres of diesel in underground storage tanks;
 - (iii) Storage of between 6 tonnes and 12 tonnes of LPG in a single-vessel storage system.

Note: Refer to the exemptions in Rule 7.7.14.

- (2) The matters over which the *Council* has restricted its discretion for the above *Restricted Discretionary Activities* are:

(a) ***Hazardous Substances/Facilities – Storage, Use and Disposal***

- (i) The degree to which the location of the use or storage of the *hazardous substance/facility* in relation to other activities and *environments* reduces the risks of adverse effects on those activities and *environments*. In particular, the following will be taken into account:
 - (1) the separation distance to neighbouring activities, with emphasis on people-sensitive activities such as *child care facilities*, schools, rest homes, hospitals, shopping centres and residential areas;
 - (2) the location of the facility in relation to the nearest aquifer, waterway, coast or other sensitive *environments*;
 - (3) the distance to environmentally sensitive areas such as wildlife habitats or water catchments.
- (ii) Whether other actions or works have been undertaken that reduce the degree of risk to a level that is acceptable in the circumstances, eg:
 - (1) identification of potential *hazards*, failure modes and exposure pathways;
 - (2) investigation of the nature of the sub-soil and the *site* geology;
 - (3) assessment of the probability and potential consequences of an accident leading to a release of a *hazardous substance* or loss of control;
 - (4) identification of cumulative and/or synergistic effects;
 - (5) *site* drainage and off-site infrastructure, eg stormwater drainage system, sewer type and capacity.
- (iii) Whether there are management practices in place (which will continue to be in place) that will significantly reduce the level of risk eg:
 - (1) fire safety and fire water management;
 - (2) adherence to health and safety and/or environmental management systems;

- (3) spill contingency and emergency planning, monitoring and maintenance schedules.
- (iv) Whether other alternative locations and processes were evaluated, and their respective benefits and costs compared with the proposal.
- (v) Whether the level and detail of the qualitative and/or quantitative risk assessment is adequate to fully assess the risk associated with the facility.
- (vi) The level of risk associated with the transportation of *hazardous substances*, both for the roading network and for the *amenity* of the *environment* through which the transport route concerned passes.
- (vii) Whether the development of the *hazardous facility* will result in restrictions being imposed on the existing or potential use of adjacent land.
- (viii) The degree to which the "direction" of the adverse effect is influenced by factors such as topography of the *site* and surrounding area, and existing *structures*.

7.7.9 DISCRETIONARY ACTIVITIES

- (1) There are no *Discretionary Activities*.

7.7.10 NON COMPLYING ACTIVITIES

- (1) The following are *Non Complying Activities*:
 - (a) Any *hazardous facility* in a *zone* not specified in the Hazardous Facilities Screening Procedure Consent Status Matrix in Rule 7.7.12(5).
 - (b) Any facility for the disposal of *hazardous substances* not provided for as a *permitted* or *restricted discretionary activity*.

Note: Refer to the exemptions in Rule 7.7.14.

7.7.11 PROHIBITED ACTIVITIES

- (1) There are no *Prohibited Activities*.

7.7.12 HAZARDOUS FACILITIES SCREENING PROCEDURE (HFSP) CONSENT STATUS MATRIX

- (1) The HFSP Consent Status Matrix in Rule 7.7.12(5) below shall be used to determine the consent status of a *hazardous facility* in the *zone* where it is to be located.

- (2) The calculation of the Effects Ratio (R) shall be undertaken by a person or organisation experienced, qualified and presently operating in the field of *hazardous substances and facilities*, using the "Hazardous Facilities Screening Procedure" contained in the document titled "Land Use Planning Guide for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facilities Operators, Ministry for the Environment (February 2002)".
- (3) Where there is any disagreement as to the Effects Ratio (R) value, then the matter shall be referred to an independent expert agreed to by both parties for a determination.
- (4) If a *zone* is not included in the Matrix, or a *hazardous substance* exceeds the limit for it to be a *restricted discretionary activity*, then it shall be a *non complying activity*. There are no *prohibited activities* for *hazardous substances*.
- (5) The Hazardous Facilities Screening Procedure: Consent Status Matrix is set out in the following table.

Zone	Consent Status	
	Permitted	Restricted Discretionary
Low Density Residential Residential Marae Development	≤ 0.05	> 0.05
Town Centre Rural Coastal Karangahake Gorge Township	≤ 0.25	> 0.25
Industrial	≤ 1	> 1

7.7.13 PERFORMANCE STANDARDS

- (1) The "Minimum Performance Requirements for Hazardous Substances" set out in Section 4.4 of the document titled "Land Use Planning Guide for Hazardous Facilities – A Resource for Local Authorities and Hazardous Facilities Operators, Ministry for the Environment (February 2002)" shall apply to all *hazardous facilities* as *permitted activities*.

7.7.14 EXEMPTIONS FROM THE HFSP

- (1) The following are exempt from the HFSP:
- (a) The storage of petrol, diesel and LPG as part of the operation of *service stations*, where the following are complied with:

- (i) Storage of up to 100,000 litres of petrol in underground storage tanks and up to 50,000 litres of diesel, provided that the "Code of Practice for the Design, Installation and Operation of Underground Petroleum Systems", published by the Department of Labour (Occupational Safety and Health Service), is adhered to.
- (ii) Storage of up to 6 tonnes (single vessel storage system) of LPG, provided that the "Australian Standard (AS/NZA 1596-2008) for LP Gas Storage and Handling - Siting of LP Gas Automotive Retail Outlets" is adhered to.

Reason

Control of these developments is provided for elsewhere and well established industry codes of practice or suitable regulations exist.

- (b) Trade waste to public sewer system and waste treatment or disposal facilities.

Reason

The difficulty of identifying the quantity and nature of the substances involved and the *conditions* of consent that apply to such systems and facilities.

- (c) Storage or use of hazardous consumer products for private domestic purposes.

Reason

The degree of *hazard* is generally below the scale of potential adverse effects considered by the HFSP.

- (d) *Retail* outlets for the domestic usage sale of *hazardous substances* (eg supermarkets, hardware shops, pharmacies).

Reason

Storage of *hazardous substances* is generally in small packages.

- (e) Facilities using genetically modified or new organisms.

Reason

These are controlled by other legislation.

- (f) Developments that are or may be hazardous but do not involve *hazardous substances* (eg *mineral* extraction, high voltage transmission *lines*, radio masts, electrical substances).

Reason

These are controlled by other District Plan provisions.

- (g) Dust resulting from explosions.

Reason

These are controlled under *rules* relating to discharge of contaminants to the air under the Waikato Regional Plan.

- (h) Gas and oil pipelines.

Reason

These are controlled by other legislation and industry codes.

- (i) Fuel in motor vehicles, drilling rigs, boats and small engines such as weed eaters, lawnmowers, chainsaws etc.

Reason

The degree of *hazard* is generally below the scale of potential effects considered by the HFSP.

- (j) Storage and use of LPG accessory to residential and rural activities, provided that the maximum volume on a residential property at any one time does not exceed 100kg, and on a rural property at any one time does not exceed 300kg.

Reason

The maximum volumes are typical of normal residential or rural use; the potential *hazard* risks are considered to be low and are controlled by other legislation and industry standards.

- (k) Storage or use of fertiliser on properties greater than 4 hectares in the *rural area* subject to compliance with the Hazardous Substances and New Organisms Act 1996 – Fertilisers (Oxidising 5.1.1 Group Standard 2006, Part 2 Site and Storage).

Reason

Potential *hazard* risks are considered to be low and are controlled by other legislation.

- (l) On farm storage and use of agrichemicals in the *rural area* in compliance with NZS8409:2004.

Reason

Potential *hazard* risks are considered to be low and are controlled by other legislation.

- (m) The use and storage of radioactive material covered by the Radiation Protection Act 1965 and the Radiation Protection Regulations 1982.

Reason

Potential *hazard* risks are considered to be low and are controlled by other legislation.

7.7.15 APPENDIX 7.7A – NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH

Note: The following regulations are for information purposes and users should refer to the latest version of this legislation.

2011/361



Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 10th day of October 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 43 of the Resource Management Act 1991, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister for the Environment given in accordance with section 44 of the Act, makes the following regulations.

Contents

1	Title
2	Commencement
3	Interpretation
4	Relationship of regulations with territorial authority and regional council functions
5	Application
6	Methods

- 7 Standards
- 8 Permitted activities
- 9 Controlled activities
- 10 Restricted discretionary activities
- 11 Discretionary activities

Regulations

1 Title

These regulations are the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

2 Commencement

These regulations come into force on 1 January 2012.

3 Interpretation

In these regulations,—

Act means the Resource Management Act 1991

current edition means the edition that has legal effect when the edition is being used

detailed site investigation means an investigation that—

- (a) is done by a suitably qualified and experienced practitioner; and
- (b) is done in accordance with the current edition of *Contaminated Land Management Guidelines No. 5—Site Investigation and Analysis of Soils*, Wellington, Ministry for the Environment; and
- (c) is reported on in accordance with the current edition of *Contaminated Land Management Guidelines No. 1—Reporting on Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment; and
- (d) results in a report that is certified by the practitioner

fuel storage system means a system in which at least 1 of the following is underground:

- (a) a storage tank for aviation kerosene, diesel, kerosene, lubricating oil, or petroleum;
- (b) the whole of the tank's ancillary equipment;
- (c) part of the tank's ancillary equipment

HAIL means the current edition of the *Hazardous Activities and Industries List*, Wellington, Ministry for the Environment

person means the person referred to in regulation 5(1)(a)

preliminary site investigation means an investigation that—

- (a) is done by a suitably qualified and experienced practitioner; and
- (b) is reported on in accordance with the current edition of *Contaminated Land Management Guidelines No. 1—Reporting on Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment; and
- (c) results in a report that is certified by the practitioner.

4 Relationship of regulations with territorial authority and regional council functions

These regulations—

- (a) deal with territorial authority functions under section 31 of the Act;
- (b) do not deal with regional council functions under section 30 of the Act.

5 Application

(1) These regulations—

- (a) apply when a person wants to do an activity described in any of subclauses (2) to (6) on a piece of land described in subclause (7) or (8):
- (b) do not apply when a person wants to do an activity described in any of subclauses (2) to (6) on a piece of land described in subclause (9).

Activities

- (2) An activity is removing a fuel storage system from the piece of land or replacing a fuel storage system in or on the piece of land, which means—
 - (a) doing any of the following:
 - (i) removing or replacing the whole system:
 - (ii) removing or replacing an underground part of the system:
 - (iii) taking away or putting back soil associated with the removal or replacement of the system or the part:
 - (b) doing any of the following for purposes associated with removing or replacing the whole system or part of the system:
 - (i) sampling the soil of the piece of land:
 - (ii) investigating the piece of land:
 - (iii) remediating the piece of land:
 - (iv) validating the piece of land:
 - (v) managing the piece of land.
- (3) An activity is sampling the soil of the piece of land, which means sampling it to determine whether or not it is contaminated and, if it is, the amount and kind of contamination.
- (4) An activity is disturbing the soil of the piece of land, which—
 - (a) means disturbing the soil of the piece of land for a particular purpose:
 - (b) does not include disturbing the soil of the piece of land, whatever the purpose, if the land is land to which regulation 33(9) or 36 of the Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009 applies.
- (5) An activity is subdividing land, which means subdividing land—
 - (a) that has boundaries that are identical with the boundaries of the piece of land; or
 - (b) that has all the piece of land within its boundaries; or
 - (c) that has part of the piece of land within its boundaries.
- (6) An activity is changing the use of the piece of land, which means changing it to a use that, because the land is as described in subclause (7), is reasonably likely to harm human health.

Land covered

- (7) The piece of land is a piece of land that is described by 1 of the following:

- (a) an activity or industry described in the *HAIL* is being undertaken on it;
 - (b) an activity or industry described in the *HAIL* has been undertaken on it;
 - (c) it is more likely than not that an activity or industry described in the *HAIL* is being or has been undertaken on it.
- (8) If a piece of land described in subclause (7) is production land, these regulations apply if the person wants to—
- (a) remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land;
 - (b) sample or disturb—
 - (i) soil under existing residential buildings on the piece of land;
 - (ii) soil used for the farmhouse garden or other residential purposes in the immediate vicinity of existing residential buildings;
 - (iii) soil that would be under proposed residential buildings on the piece of land;
 - (iv) soil that would be used for the farmhouse garden or other residential purposes in the immediate vicinity of proposed residential buildings;
 - (c) subdivide land in a way that causes the piece of land to stop being production land;
 - (d) change the use of the piece of land in a way that causes the piece of land to stop being production land.

Land not covered

- (9) These regulations do not apply to a piece of land described in subclause (7) or (8) about which a detailed site investigation exists that demonstrates that any contaminants in or on the piece of land are at, or below, background concentrations.

6 Methods

- (1) Subclauses (2) and (3) prescribe the only 2 methods that the person may use for establishing whether or not a piece of land is as described in regulation 5(7).
- (2) One method is by using information that is the most up-to-date information about the area where the piece of land is located that the territorial authority—
- (a) holds on its dangerous goods files, property files, or resource consent database or relevant registers; or
 - (b) has available to it from the regional council.
- (3) The other method is by relying on the report of a preliminary site investigation—
- (a) stating that an activity or industry described in the *HAIL* is, or is not, being undertaken on the piece of land; or
 - (b) stating that an activity or industry described in the *HAIL* has, or has not, been undertaken on the piece of land; or
 - (c) stating the likelihood of an activity or industry described in the *HAIL* being undertaken, or having been undertaken, on the piece of land.
- (4) The person must—
- (a) choose which of the 2 methods to use; and
 - (b) meet all the costs involved in using the method that the person has chosen.

7 Standards

- (1) In this regulation,—
land use means—

- (a) the current use, if the activity the person wants to do is—
 - (i) to remove a fuel storage system from the piece of land or replace a fuel storage system in or on the piece of land:
 - (ii) to sample the soil of the piece of land:
 - (iii) to disturb the soil of the piece of land:
- (b) the intended use, if the activity the person wants to do is—
 - (i) to subdivide land:
 - (ii) to change the use of the piece of land

Methodology means the current edition of the *Methodology for Deriving Standards for Contaminants in Soil to Protect Human Health*, Wellington, Ministry for the Environment

priority contaminant means a contaminant for which the *Methodology* derives a soil contaminant standard.

- (2) If the contaminant of concern is a priority contaminant and the land use fits within an exposure scenario adopted in the *Methodology*, the applicable standard is the soil contaminant standard for the priority contaminant.
- (3) If the contaminant of concern is a priority contaminant and the land use does not fit within an exposure scenario adopted in the *Methodology*, the applicable standard is whichever of the following is more appropriate in the circumstances:
 - (a) the guideline value derived in accordance with the methods and guidance on site-specific risk assessment provided in the *Methodology*:
 - (b) the soil contaminant standard for the priority contaminant of the exposure scenario adopted in the *Methodology* with greater assumed exposure than the actual exposure.
- (4) If the contaminant of concern is not a priority contaminant, the applicable standard is whichever of the following is more appropriate in the circumstances:
 - (a) the guideline value derived in accordance with the methods and guidance on site-specific risk assessment provided in the *Methodology*:
 - (b) a guideline value for the protection of human health that is chosen in accordance with the current edition of *Contaminated Land Management Guidelines No. 2—Hierarchy and Application in New Zealand of Environmental Guideline Values*, Wellington, Ministry for the Environment.

8 Permitted activities

Removing or replacing fuel storage system

- (1) Removing or replacing a fuel storage system is a permitted activity while the following requirements are met:
 - (a) the activity must be done in accordance with the current edition of *Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand*, Wellington, Ministry for the Environment:
 - (b) the territorial authority of the district where the system is located must be notified of—
 - (i) the place where the activity is to be done:
 - (ii) the dates on which it is intended that the activity begin and end:
 - (iii) the facility at which it is intended that soil taken away in the course of the activity be disposed of:
 - (c) notification under paragraph (b) must be done no sooner than 1 month and no later than 1 week before the activity begins:

- (d) the volume of soil disturbed must be no more than 30 m³ for each tank in the system:
- (e) the volume of soil taken away in the course of the activity must be no more than 30 m³ for each tank in the system:
- (f) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:
- (g) the duration of the activity must be no longer than 2 months:
- (h) the results of the investigation of the piece of land required by the guidelines described in paragraph (a) must be reported to the territorial authority within 3 months after the activity ends.

Sampling soil

- (2) Sampling the soil of the piece of land is a permitted activity while the following requirements are met:
- (a) controls to minimise the exposure of humans to mobilised contaminants must—
 - (i) be in place when the activity begins:
 - (ii) be effective while the activity is done:
 - (iii) be effective until the soil is reinstated to an erosion-resistant state:
 - (b) the soil must be reinstated to an erosion-resistant state within 1 month after the end of the course of sampling for which the activity was done:
 - (c) soil must not be taken away in the course of the activity except as samples taken for the purpose of laboratory analysis:
 - (d) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

Disturbing soil

- (3) Disturbing the soil of the piece of land is a permitted activity while the following requirements are met:
- (a) controls to minimise the exposure of humans to mobilised contaminants must—
 - (i) be in place when the activity begins:
 - (ii) be effective while the activity is done:
 - (iii) be effective until the soil is reinstated to an erosion-resistant state:
 - (b) the soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done:
 - (c) the volume of the disturbance of the soil of the piece of land must be no more than 25 m³ per 500 m²:
 - (d) soil must not be taken away in the course of the activity, except that,—
 - (i) for the purpose of laboratory analysis, any amount of soil may be taken away as samples:
 - (ii) for all other purposes combined, a maximum of 5 m³ per 500 m² of soil may be taken away per year:
 - (e) soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:
 - (f) the duration of the activity must be no longer than 2 months:
 - (g) the integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

Subdividing or changing use

- (4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:
- (a) a preliminary site investigation of the land or piece of land must exist:
 - (b) the report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:
 - (c) the report must be accompanied by a relevant site plan to which the report is referenced:
 - (d) the consent authority must have the report and the plan.

Consequence if requirement not met

- (5) If a requirement described in any of subclauses (1) to (3) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(1).
- (6) If a requirement described in subclause (4) is not met, the activity is a controlled activity under regulation 9 while it meets the requirements in regulation 9(3).

9 Controlled activities

Removing or replacing fuel storage system, sampling soil, or disturbing soil

- (1) If a requirement described in any of regulation 8(1) to (3) is not met, the activity is a controlled activity while the following requirements are met:
- (a) a detailed site investigation of the piece of land must exist:
 - (b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:
 - (c) the consent authority must have the report:
 - (d) conditions arising from the application of subclause (2), if there are any, must be complied with.
- (2) The matters over which control is reserved are as follows:
- (a) the adequacy of the detailed site investigation, including—
 - (i) site sampling:
 - (ii) laboratory analysis:
 - (iii) risk assessment:
 - (b) how the activity must be—
 - (i) managed, which may include the requirement of a site management plan:
 - (ii) monitored:
 - (iii) reported on:
 - (c) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:
 - (d) the timing and nature of the review of the conditions in the resource consent:
 - (e) the duration of the resource consent.

Subdividing or changing use

- (3) If a requirement described in regulation 8(4) is not met, the activity is a controlled activity while the following requirements are met:
- (a) a detailed site investigation of the piece of land must exist:
 - (b) the report on the detailed site investigation must state that the soil contamination does not exceed the applicable standard in regulation 7:

- (c) the consent authority must have the report:
 - (d) conditions arising from the application of subclause (4), if there are any, must be complied with.
- (4) The matter over which control is reserved is the adequacy of the detailed site investigation, including—
- (a) site sampling:
 - (b) laboratory analysis:
 - (c) risk assessment.

No public notification of application for resource consent

- (5) The consent authority must not give public notification of an application for a resource consent to do any of the activities.

Consequence if requirement not met

- (6) If a requirement described in this regulation is not met, the activity is a restricted discretionary activity under regulation 10 while it meets the requirements in regulation 10(2).

10 Restricted discretionary activities

- (1) This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity or a controlled activity.
- (2) The activity is a restricted discretionary activity while the following requirements are met:
- (a) a detailed site investigation of the piece of land must exist:
 - (b) the report on the detailed site investigation must state that the soil contamination exceeds the applicable standard in regulation 7:
 - (c) the consent authority must have the report:
 - (d) conditions arising from the application of subclause (3), if there are any, must be complied with.
- (3) The matters over which discretion is restricted are as follows:
- (a) the adequacy of the detailed site investigation, including—
 - (i) site sampling:
 - (ii) laboratory analysis:
 - (iii) risk assessment:
 - (b) the suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination:
 - (c) the approach to the remediation or ongoing management of the piece of land, including—
 - (i) the remediation or management methods to address the risk posed by the contaminants to human health:
 - (ii) the timing of the remediation:
 - (iii) the standard of the remediation on completion:
 - (iv) the mitigation methods to address the risk posed by the contaminants to human health:
 - (v) the mitigation measures for the piece of land, including the frequency and location of monitoring of specified contaminants:
 - (d) the adequacy of the site management plan or the site validation report or both, as applicable:

- (e) the transport, disposal, and tracking of soil and other materials taken away in the course of the activity:
- (f) the requirement for and conditions of a financial bond:
- (g) the timing and nature of the review of the conditions in the resource consent:
- (h) the duration of the resource consent.

Consequence if requirement not met

- (4) If a requirement described in this regulation is not met, the activity is a discretionary activity under regulation 11.

11 Discretionary activities

- (1) This regulation applies to an activity described in any of regulation 5(2) to (6) on a piece of land described in regulation 5(7) or (8) that is not a permitted activity, controlled activity, or restricted discretionary activity.
- (2) The activity is a discretionary activity.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide a national environmental standard for activities on pieces of land whose soil may be contaminated in such a way as to be a risk to human health. The activities are removing or replacing a fuel storage system, sampling the soil, disturbing the soil, subdividing land, and changing the use of the piece of land. The activities are classed as permitted activities, controlled activities, restricted discretionary activities, or discretionary activities.

The current editions of documents incorporated by reference are available on the Ministry for the Environment's website.

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