

**SUBMISSION BY THE OIL COMPANIES ON THE PROPOSED KAPITI COAST
DISTRICT PLAN 2012**

TO: District Plan Review
Kapiti Coast District Council
Private Bag 60601
PARAPARAUMU 5254

Via email: districtplanreview@kapiticoast.govt.nz.

NAME:	Z Energy Ltd PO Box 2091 WELLINGTON	BP Oil NZ Ltd PO Box 892 WELLINGTON
--------------	--	--

Mobil Oil NZ Ltd
PO Box 1709
AUCKLAND

(the Oil Companies)

1.0 INTRODUCTION

- 1.1 Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (*the Oil Companies*) receive, store and distribute refined petroleum products.
- 1.2 The Oil Companies core business relates to the operation and management of their individual service station networks, commercial refuelling facilities and bulk storage (Terminal) facilities at ports and airports. The Oil Companies also supply petroleum products to individually owned businesses. Hydrocarbons are the principal substance managed by the Oil Companies.
- 1.3 Within the Kapiti Coast District, the Oil Companies own, operate and/or supply service stations and truck stops and supply various commercial activities.
- 1.4 The Companies seek to ensure that the provisions of the Proposed Kapiti Coast District Plan 2012 (*the District Plan*) do not unreasonably and/or unnecessarily restrict the Oil Companies' maintenance activities and oil industry standardised procedures and:
- (i) Provide for the use and storage of petroleum products and LPG at service stations, in accordance with the MfE Guidelines.

- (ii) Ensure Contaminated Land provisions are in general accordance with and do not fetter the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011;

1.5 These matters are discussed in more detail as follows.

2.0 HAZARDOUS SUBSTANCES

Objectives and Policies

- 2.1 Policies 9.22 and 9.25 are supported and should be retained in the District Plan without further modification.
- 2.2 The Oil Companies support Policy 9.23 that seeks to manage hazardous facilities in identified hazard risk areas. It is noted that underground fuel storage tanks will not generally be at risk during a flood event and compliance with industry best practice would, in any case, require the design of service station or truck stop facilities to maintain their integrity and function during natural hazard events. It is significant to note that while the underground tanks at several Christchurch service stations were displaced by the September 2010 and February 2011 earthquakes, there were no simultaneous compartment failures and there were no significant product losses. This confirms the resilience of these structures when designed, installed and operated in accordance with HSNO regulations and industry standards.

Policy 9.24

- 2.3 The Oil Companies oppose Policy 9.24 which reads as follows:

Hazardous facilities and substances will be managed to avoid levels of risk that are incompatible with any activities permitted in the adjacent area, by:

- a) minimising effect including risk beyond the boundary; and*
- b) identifying and assessing the risk to the environment from individual and cumulative effects of the operation or hazardous facilities.*

The Hazardous Facility Screening Procedure will be used to identify facilities or activities requiring more detailed assessment and/or additional control

- 2.4 The linkage to the HFSP in the policy is supported. It is noted that the use and storage of certain volumes of hazardous substances at service stations sites are exempt from the HFSP. Notwithstanding that the Oil Companies have a concern that the policy effectively requires an assessment of risk based on what is permitted by the zoning rather than actual risk presented at a specific location. For example incompatible activities may have been introduced via resource consent, in which it would inappropriate not to assess the risk to that activity. Alternatively a particular type of sensitive activity, permitted by zone provisions, may not be capable of establishing at the particular location (e.g. land may be owned by the applicant) in which case the policy could be requiring a fanciful assessment of risk. The Oil Companies accept that new hazardous facilities should be designed to manage risk on existing receptors to an appropriate and acceptable level and therefore keeping the policy suitably broad. This is considered best achieved by deleting that the word "permitted" from the policy.

Policy 9.26

2.5 Policy 9.26 and its associated explanation read as follows:

The transport of hazardous substances as part of a land use activity will be undertaken in a safe manner by modes and transport routes which prevent or minimise the risk of adverse effects on human health, on natural and physical resources, or on other transport users

Explanation

The transport of hazardous substances on land within New Zealand is controlled by the Land Transport Rule: Dangerous Goods 2005 (created under the Land Transport Act 1998), and is required to follow the New Zealand Standard 5433 (which is administered by the Ministry of Transport). Although it is not considered necessary for the transport of hazardous substances in the District to be the subject of resource consent, operators who intend to transport hazardous substances, as part of a wider operation, will be required to consider the possible associated adverse effects to the environment as part of any application for resource consent.

2.6 The Oil Companies do not support the requirement in the policy for the demonstration of safe transportation routes for the transportation of hazardous substances to and from the site. As noted in the explanation to the policy, the transportation of hazardous substances is tightly controlled by the Hazardous Substances and New Organisms (HSNO) Act 1996 administered by the Environmental Protection Authority and the Land Transport Act administered by the New Zealand Transport Agency. The explanation notes that the transport of hazardous substances should not be subject to resource consent unless transport of such substances is part of the "wider operations". It is not clear what is meant by the term wider operations. The Oil Companies oppose this position and see it as unnecessary for the following reasons:

- Hazardous substances have to be transported to where they are used and needed. There is adequate regulation already in place around the safe transport of such substances.
- The policy would require a demonstration of a safe route, which in turn requires a potentially a high level of risk assessment work.
- It will be difficult to prove that any particular route is "safe" as that will be dependent upon prevailing conditions at the time. To assess risk is specialist work and is costly. It has not been undertaken in many jurisdictions.
- The majority of the service stations in the Kapiti District are located on State Highways and therefore the transportation of hazardous substances will generally occur on state highways which are not managed by Council. If one cannot drive a petrol tanker along a state highway one can't drive it anywhere. New service stations will generally be located on high traffic areas. There are some other service stations located on main roads.
- Addressing effects of some aspects relating to the transportation of hazardous substances including on-site manoeuvring, safe access and egress and unloading areas may be appropriate – although these effects are in reality addressed by the relevant traffic provisions.

- The Oil Companies usually employ independent companies to undertake the transportation of hazardous substances to a site and as a consent holder will have little control over the route taken by the delivery companies, particularly if they making a subsequent delivery to another site. Drivers inevitably make decisions on transport routes based on the prevailing road conditions at the time and have no control on road conditions at any one time. Therefore last minute changes to the route selection may be required. How safely a vehicle is driven is a matter for the Transport Act.

2.10 The Oil Companies therefore support a modification to Policy 9.26 that focuses on managing the effects of the transportation of hazardous substances in relation to the specific site in question including on-site manoeuvring, access and egress and unloading arrangements for the hazardous substance but omits reference to “modes and transport routes”. There also needs to be a similar consequential amendment to Policy 9.28 to remove reference to selecting transport routes.

Rules

HFSP Exemptions

2.12 The explanation in Policy 9.24 outlines the exemptions from the HFSP for petroleum and diesel in underground tanks at service stations. The Oil Companies support the retail sale of petrol, including up to a storage of 100,000 litres of petrol in underground storage tanks and up to 50,000 litres of diesel being exempt from the HFSP. However it is noted that the *Design, Installation and Operation of Underground Petroleum System (Department of Labour (1992))*, *Code of Practice for Design, Installation and Operation of Underground Petroleum Storage System (Department of Labour (1992))* and *Supplement No 1 Management of Existing Underground Petroleum Storage Systems (Department of Labour (1995))* have been superseded by the following and therefore the new documents should be referenced accordingly:

- *“Below Ground Stationary Container Systems for Petroleum – Design and Installation HSNO COP 44”*, Environmental Protection Agency, May 2012.
- *Below Ground Stationary Container Systems for Petroleum – Operation HSNO COP 45*, Environmental Protection Agency, May 2012.

2.13 The retail sale of LPG (up to 6 tonnes and single vessel storage) is also exempt from the HFSP. The Oil Companies request that this exemption also applies to multiple vessel storage as there is an industry-wide shift in the method of supplying LPG to customers. Many service station sites are now replacing single vessel LPG storage (which enables smaller vessels to be filled on-site) with aboveground storage in multiple smaller vessels contained in cages on site. The LPG vessels will now be filled off-site, with empty bottles being swapped for pre-filled ones. The Oil Companies are adopting a ‘swappa bottle’ approach at a number of its service stations, as upgrade and/or development opportunities arise. Generally there are between 30-150 bottles stored on site (depending on the size of the site) each with a capacity of 9kg. The Oil Companies seek that such change in storage be permitted and be exempt from the HFSP.

Rule Framework

- 2.14 The explanation to Policy 9.24 outlines a number of exemptions from the HFSP, however, the current rule structure does not appear to have carried this intent forward into the rules. It is important that such exemptions are recognised and provided for in the rule framework to ensure that they are not subject to a requirement to comply with the effects ratios in Rule 9E.1.2.
- 2.15 The Oil Companies support the intent of Rule 9E.1.2 which provides for the retail sale of LPG, petrol and diesel as a permitted activity in the District Centre, Outer Business Centre, Town Centre, Local Centre or Industrial Zones. It is understood that all of the existing service stations in the Kapiti District are located in these zones. The Oil Companies do not consider it necessary to limit the HFSP exemption only to the zones specified. The Land Use Planning Guide for Hazardous Facilities makes no reference to the exemptions being zone selected. It is appropriate to make the exemption apply to all zones. The reality is that any new service station in any other zone will trigger consent for other reasons in any event – it should not be the perceived risks associated with the hazardous substance storage at a service station that should be the primary trigger. The Oil Companies do not oppose the non-complying activity status for service stations located in the Open Space (Recreation, Local Parks and Conservation & Scenic) Zone, Private Recreation & Leisure Zone, and River Corridor Zone (Rule 9E.5. as service stations are not anticipated to locate in such zones. However, the Oil Companies request that the storage of hazardous substances associated with any service station otherwise outside the specified zones is considered as a controlled activity or at worse a restricted discretionary activity as opposed to a full discretionary activity (Rule 9E.4.1).
- 2.16 A controlled or restricted discretionary activity status is considered appropriate for service stations outside of the District Centre, Outer Business Centre, Town Centre, Local Centre or Industrial Zones as service stations are tightly controlled by the requirements of HSNO and many well established codes and standards including the following:
- *Below Ground Stationary Container Systems for Petroleum – Design and Installation HSNO COP 44*, Environmental Protection Agency, May 2012.
 - *Below Ground Stationary Container Systems for Petroleum – Operation HSNO COP 45*, Environmental Protection Agency, May 2012.
 - *AS/NZ 1596:2008 LP Gas Storage and Handling*;
 - *Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand* (MfE, August 1999).
 - *Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand* (MfE, December 1998).
- 2.17 The above codes and regulations apply to the service stations irrespective of location or zoning, although the applicable requirements in the codes do vary depending upon the sensitivity of the location (in respect of hazardous substances).

2.18 The Oil Companies support the retail and sale of petrol being a controlled activity in areas having a natural hazard risk (in accordance with Policy 9.23). However the Oil Companies do not support the requirement for service stations not to be located within “*such a distance from a registered drinking-water supply (as identified in Policy 11.22) that it would pose a risk of contamination*”. There are a number of issues with link the policy matter specified in 11.22 to the rule:

- There is no way of determining or assessing what any setback should be – the provision is therefore void for certainty.
- It is not clear why the Council considers it necessary to impose a rule that is essentially a duplication of Regional Council functions.
- Appears to misinterpret the obligations and requirements under The Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES for Human Drinking Water). The Regulation only requires a territorial authority to impose a notification condition on a resource consent to notify the drinking water supply operator in the event that a circumstance specified in Regulation 12 (1(a) and (b) occurs.
- It is not necessary to specifically refer to the NES for Human Drinking Water in the rules as it will apply in any event. If it is to be reference as a matter over which control is reserved over or otherwise restricted it should be appropriately referenced.

2.19 On that basis, any reference to “*or within such a distance from a registered drinking-water supply (as identified in Policy 11.22) that it would pose a risk of contamination*” should be deleted from the District Plan from all permitted rules as this issue can only be addressed by way of a condition on a resource consent.

Relief Sought:

(additions underlined, deletions in ~~strikethrough~~)

1. Retain without modification Policies 9.22, 9.23 and 9.25 as follows:

Policy 9.22

Hazardous facilities and activities will be located, designed, constructed and managed to minimise adverse effects and risks to the environment, such as:

- a) contamination of water, soil and air;*
- b) damage to natural systems including ecosystems;*
- c) accumulation of persistent or bioaccumulative 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 and digestive systems;*
- e) fire, explosive events, or corrosive damage.*

Policy 9.23

Hazardous facilities or activities will be managed to minimise hazard risk in any of

the following areas as identified on District Plan maps:

- a) river or stream corridor;*
- b) overflow path;*
- c) residual overflow path ;*
- d) flood erosion area;*
- e) flood storage area;*
- f) ponding area;*
- g) fill control hazard area;*
- h) residual ponding area;*
- i) moderate or high erosion area;*
- j) high susceptibility to liquefaction;*
- k) well defined fault avoidance area;*
- l) well defined extension fault avoidance area;*
- m) coastal hazard management area (CHMA).*

Policy 9.25

The establishment of sensitive land uses within or in close proximity to existing lawfully established hazardous facilities or areas identified for hazardous facilities shall be avoided or managed, in order to allow such facilities to carry out their operations without unreasonable constraints.

- 2. Amend Policy 9.24 to focus the assessment of risk more appropriately on the actual risks to the receiving environment as follows:**

Hazardous facilities and substances will be managed to avoid levels of risk that are incompatible with any activities permitted in the adjacent area, by:

- a) minimising effect including risk beyond the boundary; and*
- b) identifying and assessing the risk to the environment from individual and cumulative effects of the operation or hazardous facilities.*

The Hazardous Facility Screening Procedure will be used to identify facilities or activities requiring more detailed assessment and/or additional control.

- 3. Amend Policy 9.26 to remove the requirement to demonstrate that safe transportation routes have been selected as follows:**

The transport of hazardous substances onto and from a site as part of a land use activity will be undertaken in a safe manner ~~by modes and transport routes which prevent or to~~ minimise the risk of adverse effects on human health, on natural and physical resources, or on other transport users.

Explanation

The transport of hazardous substances on land within New Zealand is controlled by the Land Transport Rule: Dangerous Goods 2005 (created under the Land Transport Act 1998), and is required to follow the New Zealand Standard 5433 (which is administered by the Ministry of Transport). ~~Although it is not considered necessary for the transport of hazardous substances in the District to be the subject of resource consent, operators who intend to transport hazardous substances, as part of a wider operation, will be required to consider the possible associated adverse effects to the environment as part of any application for resource consent.~~

4. Make the following changes to Policy 9.28:

When considering land use applications for hazardous facilities or other activities involving hazardous substances, the Council will minimise hazard risk by having regard to the following:

.....

b. the management of the hazardous substances proposed to be used, stored, transported and/or disposed of, ~~including selection of transport routes~~, the management of wastes, and cleaner production and waste minimization initiatives;

.....

5. Make the following changes to Exemption 13 in the Explanation under Policy 9.24 to refer to the most up to date standards:

13. Hazardous Facilities which have well developed industry standards and codes of practice based on well established levels of risk also may be exempted from the HFSP, except in any area identified on District Plan maps as having a natural hazard risk.

Activities deemed to comply with this exemption are:

- *The retail sale of petrol (up to 100,000 litres storage in underground tanks) and diesel (up to 50,000 litres storage in underground tanks) provided that the OSH Code of Practice for Design Installation and Operation of Underground Petroleum Storage Systems' (1992), Supplement No 1 Management of Existing Underground Petroleum Storage Systems (1995) or any subsequent versions / updates are adhered to. following standards are adhered to:
 - "Below Ground Stationary Container Systems for Petroleum – Design and Installation HSNOCOP 44", Environmental Protection Agency, May 2012.
 - Below Ground Stationary Container Systems for Petroleum – Operation HSNOCOP 45, Environmental Protection Agency, May 2012.*
- *The retail sale of LPG (up to 6 tonnes in single and/or multiple vessel storage) provided that the Australian/New Zealand AS/NZS 1696 1596:2008 or any subsequent update is adhered to.*

6. Ensure the following activities are exempt from the HFSP. This can be achieved by making the following changes to Rule 9E.1.2.2.

The Hazardous Facility Screening Procedure returns an effect's ratio trigger level below the thresholds in the table below:

amendments in the table below:

Zone	Permitted (No activity to exceed)
Residential, Beach Residential, Ngarara, Waikanae North Development, Rural Residential, Rural Eco-hamlet	Effects ratio of 0.02
Rural Plains, Rural Dunes, Local Centre, Town Centre, Outer Business Centre, District Centre	Effects ratio of 0.2
Industrial	Effects ratio of 0.5
All Open Space and Private Recreational and Leisure	Effects ratio of 0.02
Airport (subject to designation)	Effects ratio of 0.2 except if closer than 30 metres from boundary with residential zone, then effects ratio of 0.02

Rule 9E.1.2.2 above does not apply to those activities outlined in the explanation to Policy 9.24 as being exempt from the HFSP.

7. Provide for the following activities as permitted activities in the District Centre, Outer Business Centre, Town Centre, Local Centre or Industrial zones (except where they are located within an area mapped as having natural hazard risk) and controlled activities in all other zones (except those specified in Rule 9E.5). Ensure the rules cascade is clear.

The retail sale of LPG, petrol and/or diesel in the following quantities:

- a. an aggregate six tonnes of LPG stored in single or multiple vessels; and
- b. an aggregate 100,000 litres of petrol stored; and
- c. an aggregate 50,000 litres of diesel stored.

This can be achieved by making the following amendments to the Rules:

Rule 9E.1.2 (Permitted Activities)

1. The facility is located in District Centre, Outer Business Centre, Town Centre, Local Centre, or Industrial zones.
2. The facility is not located in any area mapped as having natural hazard risk (as identified in Policy 9.23) ~~or within such a distance from a registered drinking water supply (as identified in Policy 11.22) that it would pose a risk of contamination.~~
3. The site has no more than:
 - (a) an aggregate six tonnes of LPG stored in single or multiple vessels; and
 - ~~(b) one LPG storage tank; and~~
 - (c) an aggregate 100,000 litres of petrol stored; and
 - (d) an aggregate 50,000 litres of diesel stored.
4. No storage tanks for petrol or diesel are above-ground.
5. Underground tanks comply with the following standards: ~~'Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems (Department of Labour, First Edition 1992) and the 'Supplement No 1 Management of Existing Underground Petroleum Storage Systems (1995)'~~.

- Below Ground Stationary Container Systems for Petroleum – Design and Installation HSNO COP 44”, Environmental Protection Agency, May 2012.
- Below Ground Stationary Container Systems for Petroleum – Operation HSNO COP 45, Environmental Protection Agency, May 2012.

The storage of LPG complies with the following standard:

- Australian/New Zealand AS/NZS 1596:2008 or any subsequent update

Rule 9E.2.1 (Controlled Activities)

1. ~~The facility is located in District Centre, Outer Business Centre, Town Centre, Local Centre, or Industrial zones. All other zones, except those specified in Rule 9E.4.1, or~~
2. ~~The facility is located in any area mapped as having natural hazard risk (as identified in Policy 9.23) or within such a distance from a registered drinking water supply (as identified in Policy 11.22) that it would pose a risk of contamination.~~
3. The activity shall meet permitted activity standards 9E.1.2.1, 9E.1.2.3, 9E.1.2.4 and 9E.1.2.5.

Matters over which Council reserves control (or Restricts Discretion)

1. ~~Potential hazards and exposure pathways arising from the proposed facility being located within an area identified on District Plan maps as having a natural hazard risk, or within such a distance from a registered drinking water supply that it would pose a risk of contamination.~~
2. Imposition of a notification condition as required by The Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (NES for Human Drinking Water).
3. Description of Natural Hazard, potential failure mode and exposure pathway(s) together with any site management system(s) proposed to reduce or avoid the risk.

Rule 9E.4.1 Discretionary Activities

1. A hazardous facility involving hazardous substances (including the retail of LPG, petrol and/or diesel) that is not a permitted activity under rule 9E.1.1 or 9E.1.2, a controlled activity under rule 9E.2.1 or a non complying activity under Rule 9E.5.1.

Rule 9E.5 Non Complying Activities

1. The retail sale of LPG, petrol and/or diesel, or a facility which returns an effect's ratio above the threshold for the zone in which the facility is located (9E.1.1.2) when assessed in accordance with the Hazardous Facility Screening Procedure that is located:
 - a) in all Open Space Zones, Private Recreation & Leisure Zone, and River Corridor Zone;
 - or
 - b) within a well defined fault avoidance area; or
 - c) within a well defined extension fault avoidance area; or
 - d) within a coastal hazard management area; or
 - e) sand and peat soils.

3.0 CONTAMINATED LAND

Definition of contaminated land and potentially contaminated land

- 3.1 The Oil Companies support the definitions of “contaminated land” and “potentially contaminated land” in the District Plan as follows:

Contaminated land shall have the same meaning as in the Resource Management Act 1991.

Potentially contaminated land means land that by virtue of its historical use and the types of activities previously undertaken upon it may be contaminated land. It includes land uses identified in the Ministry for the Environment’s hazardous activities and industries list (HAIL) or land that is classified on the Wellington Regional Council’s Selected Land Use Register (SLUR) as having a verified or unverified history on the HAIL.

Objectives and Policies

- 3.2 The Oil Companies support the general intent of the Contaminated Land Policies in Section 9.6.3 and seeks that these policies are retained in the District Plan without modification.

Rules

- 3.3 The reference to the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) in the District Plan is supported. However, the Oil Companies oppose the duplication of the rules of the NES in the District Plan to purportedly address and apply those provisions in order to address effects other than human health including contaminants on eco systems. The Oil Companies have a concern in relation to the nature and scale of effects the Council is and will be seeking to control. Human health effects are clearly the key focus for District Councils. Other effects such as effects from activities that extend beyond a site boundary will be effectively discharges and therefore the responsibility of the Regional Council. Many District Councils have been purposefully limiting their responsibilities to the NES to avoid the potential to duplicate regional council functions. It is noted the Section 32 report page 35 states:

The NES effectively replaces district plan rules to standardise the approach across New Zealand. For this reason, the proposed Man-made Hazards chapter does not contain rules pertaining to the following activities. However, the evaluation of the proposed rules takes into account the scope of the standards in the NES as these are relevant to making the evaluation.

- 3.4 It would therefore appear that there was not an intention to include such rules or at the least there has been no specific Section 32 evaluation of the proposed NES and that which has been done is inadequate.
- 3.5 A further and unnecessary complication arises with the inclusion of NES paraphrased provisions that will make and cause potential administrative complications and involve

applicants in unnecessary and inappropriate costs. It also undermines the intent of the NES to have nationally standardised provisions. Some examples of where this paraphrasing causes concern is identified below:

- Rule 9E.1.3 and 9E.1.4.4 in the District Plan includes the following permitted standard:

Where there is a structure in place designed to contain contaminants the integrity of the structure shall not be compromised.

The above standard appears to be based on Clause 3(g) in the NES which reads as follows:

The integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.

The intent in the NES is to ensure that soil disturbance activity does not compromise any remediation type structures containing contaminated soil. The wording in the District Plan appears to miss the point and effectively changes the application of that to structures that contain contaminants. There are a range of structures that will contain contaminants including bunds and tanks. The provision as drafted would therefore prevent removal activities such as the removal of tank or bund wall or pipe even when there is no risk of any spill (e.g. tank replacement process). The drafting is inappropriate.

- Rule 9E.1.3.6 in the District Plan includes the following standard:

A maximum of 5m³ per 500m² of soil shall be removed from the site per year, excluding soil taken from samples.

The above standard appears to be based on Clause (3)(d) of the NES.

The drafting is clumsy. The use of the term "shall" effectively requires the removal of 5m³ per 500m² of soil from all contaminated land in a year as a permitted activity, irrespective of whether or not earthworks are being undertaken. The NES correctly uses the term "may" which sets a maximum limit as opposed to a mandatory requirement.

- Rule 9E.1.3.4 in the District Plan includes the following standard:

Removed soil shall be disposed at a facility authorised to receive such waste.

The above standard appears to be based on Clause (3)(e) of the NES reads as follows:

Soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:

The reference to “waste” brings to bear the scope of the definition of water in the District Plan. The definition includes threshold effects test. This definition may change through the decision process and has the potential to result in unintended outcomes. It may well create some conflicts with the application and administration of the NES.

- Rule 9E.1.6.1 of the District Plan includes the following standard:

A preliminary site investigation of the site has been undertaken confirming that the contamination levels are acceptable for the proposed (sic) land use.

The above standard appears to be based on Clause 4(a) of the NES reads as follows:

A preliminary site investigation of the piece of land must exist.

The wording in the District Plan would apply to an entire site not just “the piece of land” which is potentially contaminated. Furthermore it requires confirmation that contamination levels are acceptable. The drafter clearly misunderstands the nature of the NES and the MfE Guidelines. Confirmation of the acceptability or otherwise of any residual contamination will only come from a detailed investigation. For example, it means that a farm that has a sheep dip is effectively being required to sampling for the entire farm confirming acceptability. For the Oil Companies where replacing an underground tank at an airfield it would require a site investigation of the whole airfield. This is inappropriate.

- Rule 9E.3.1.2 of the District Plan includes the following standard:

The detailed site investigation, including a risk assessment, undertaken for all other receptors shall follow the hierarchy of guideline values in the Ministry for the Environment’s Contaminated Land Management Guidelines No.2 Hierarchy and Application in New Zealand of Environmental Guideline Values.

The provision does not appear related to any provision in the NES. It requires a site investigation and risk assessment for all other receptors. It is inappropriate to highlight the scope of investigation relating to all receptors. The MfE Guidelines specify how investigations are to occur, this should not be skewed by selected emphasis. It is also uncertain what is meant by the following the hierarchy of guideline values. Presumably it seeks to have the results reported against relevant guideline values. The extent and nature of that is a concern particularly if it relates to groundwater or surface water discharges as those matters are clearly regional council responsibilities and there is a real risk of duplication.

- Rule 9E.3.1.3 of the District Plan reads as follows:

The conditions of the investigation are complied with.

The above standard appears to be based on Clauses 9(1)(d) and 10(2)(d) of the NES reads as follows:

Conditions arising from the application of subclause (3), if there are any, must be complied with.

A detailed site investigation will not set conditions to be complied with. It may well include recommendations but those can't be considered conditions. The NES provisions are concerned about the compliance with conditions imposed by the Consent Authority through the decision making process not through investigations.

3.6 For the reasons given above the Oil Companies seek that Rules 9E.1.3-9E.1.6, 9E.2.2, 9E.3.1 and 9E.3.2 be removed from the District Plan

3.7 The second paragraph under Section 9.6.4 Hazardous Substances and Contaminated Land Rules and Standards reads as follows:

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, which the Council is responsible for enforcing, is applicable to this topic. The rules of the NES apply to managing the effects of contaminants in soil on human health. The District Plan rules apply to managing other effects, including the effects of contaminants on eco-systems. The Standard is available at: <http://www.mfe.govt.nz> and at Kāpiti Coast District Council offices.

3.8 Reference to the management of effects on ecosystems should be deleted as this is a function of the Regional Council and it is not appropriate or necessary for the District Plan to duplicate the functions of the Regional Council.

3.9 The Oil Companies would support the NES being included in the District Plan as an appendix.

Relief Sought:

(additions underlined, deletions in ~~striketrough~~):

1. **Retain without modification the definitions of "contaminated land" and "potentially contaminated land" in the District Plan as follows:**

***Contaminated land** shall have the same meaning as in the Resource Management Act 1991.*

***Potentially contaminated land** means land that by virtue of its historical use and the types of activities previously undertaken upon it may be contaminated land. It includes land uses identified in the Ministry for the Environment's hazardous activities and industries list (HAIL) or land that is classified on the Wellington Regional Council's Selected Land Use Register (SLUR) as having a verified or unverified history on the HAIL.*

2. Retain without modification the text under the heading 9.6.3 Contaminated and Potentially Contaminated Land.

3. Retain without modification Policies 9.29, 9.30, 9.31, 9.32, 9.33 and 9.34 which read as follows:

Policy 9.29

Contaminated and potentially contaminated land in the District will be identified through the consent or plan change process, to enable the land to be managed or remediated to eliminate any unacceptable risk to the environment.

Policy 9.30

Contaminated and potentially contaminated land in the District will be identified using the following criteria:

- a) was used, is presently used, or is likely to have been used for an activity appearing on the Hazardous Activities and Industries List; or*
- b) identified as contaminated by the Kāpiti Coast District Council or the Wellington Regional Council's SLUR database.*

Policy 9.31

Site investigations of contaminated land will be carried out in accordance with national best practice, including the Ministry for the Environment's Contaminated Land Management Guidelines No.1 to No. 5.

Policy 9.32

Any development, subdivision or change in land use on HAIL land, or land identified as contaminated or potentially contaminated by the Kāpiti Coast District Council or the Wellington Regional Council's SLUR database, that is reasonably likely to increase the risk of exposing people or the environment to contaminants, will be managed or remediated to eliminate any unacceptable risk to the environment.

Policy 9.33

The remediation and/or on-going management of contaminated or potentially contaminated land will be undertaken in a manner that is appropriate for any likely future use of that land.

Policy 9.34

When considering whether contaminated or potentially contaminated land is safe for its intended use, subdivision or development, Council will have regard to the following:

- a) the nature and extent of any contamination of soil or groundwater and the potential sources of contamination;*
- b) the approach to any proposed remediation, and/or ongoing management of the contamination, including:
 - i. extent of earthworks or removal of materials undertaken, including any method to control the release of contaminants into the environment;*
 - ii. treatment or disposal methods for contaminated or potentially contaminated materials, soil or water;*
 - iii. measures employed to prevent or mitigate any adverse effects on**

- human health, water quality, or the downstream receiving environment are appropriate;*
- iv. methods to address the risk of the contamination to public health and safety and that of workers involved in site works;*
- c) the extent to which the effects of remediation are acceptable;*
- d) the suitability of the land for its intended use;*
- e) whether adequate measures will be taken to ensure the safe operation of the proposal on the land.*

- 4. Make the following changes to the paragraphs under the heading 9.6.4 Hazardous Substances and Contaminated Land Rules and Standards to remove duplication with the Regional Council functions and to include the NES in the District Plan as an appendix.**

The following rules shall apply to activities that involve the ~~disturbance or use of contaminated or potentially contaminated land, or use, storage, and/or disposal of hazardous substances.~~ Consideration shall be given to the relevant rules and conditions for the zone in which the activity is to be located. Regard shall be had to all Objectives and Policies which may be relevant to any proposed activity subject to the provisions of these rules.

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, which the Council is responsible for enforcing, is applicable to this topic. The rules of the NES apply to managing the effects of contaminants in soil on human health. ~~The District Plan rules apply to managing other effects, including the effects of contaminants on eco-systems.~~ The Standard is available at: <http://www.mfe.govt.nz> and at Kāpiti Coast District Council office and is included in Appendix X

- 5. Remove any rules in the District Plan which duplicate those in the NES. This can be achieved by deleting Rules 9E.1.3-9E.1.6, 9E.2.2, 9E.3.1 and 9E.3.2.**

4.0 EARTHWORKS

- 4.1** The most common earthworks undertaken by the Oil Companies are those associated with the replacement and/or removal of underground fuel storage tanks (underground petroleum storage systems (or UPSS)). While these activities are now controlled by and subject to the NES, they are still also subject to any relevant earthworks standards in the District Plan. Excavations are usually 4.5 to 5.0m deep and retained via sheet piling. Most excavations will meet the permitted activity conditions of the NES – as was intended when creating the provisions. The District Plan requires resource consent for earthworks exceeding 100m³ per site in the “Working Environment” or greater than 1.0m in depth. This control has the potential to unnecessarily constrain or fetter the permitted activities of the NES (e.g. particularly in relation to removal and replacement of fuel storage systems).

- 4.2** The definition of earthworks is as follows:

Earthworks means any alteration to the land contour or disturbance of land including the deposition of cleanfill and the excavation and backfilling or recompaction of existing natural ground, but excludes cultivation and domestic gardening. The limits on earthworks in the

standards apply to any earthworks within any 5 year period except in relation to overflow paths, ponding areas and the River Corridor.

- 4.3 The NES only applies to soil, it does not apply to bedding material around the tanks. This is a significant difference and important one to make as there are substantial volumes of material required to bed in the tanks. The NES only applies to disturbance and does not double count by including backfill. The earthworks provisions do just that thereby effectively reducing the permitted volume to 50m³ and which applies to a 5 year period (as per definition) or 10 year period in terms of the rule.
- 4.2 As such, the Oil Companies request that an exemption from the earthworks provisions is provided for UPSS removals in all zones. This could be achieved either by way of exclusion from the definition of earthworks or with a specific rule. The inclusion of such an exemption is about ensuring that UPSS tanks can be removed without needing to unnecessarily obtain additional resource consents.
- 4.3 This is considered appropriate as with timely, efficient procedures in place, the period in which the earthworks are undertaken is brief and any effects are temporary. There are no changes to ground level and the surface of the area affected is reinstated. In the context of an existing service station activity, the earthworks will not change the general topography of the site nor will they adversely affect the appearance of the site. As earthworks will already have occurred in order to put the tanks in place, their removal and/or replacement will not disturb any sites of particular historical or cultural significance. The site will therefore retain its generic character, with no impact on the wider landscape character. Standard procedures employed on site include the adoption of a Construction Management Plan, describing the site management regime to be adopted on site, including full erosion and sediment control measures to be employed on the site and measures to mitigate against and, if necessary, address potential nuisance effects, including details of specific measures to control noise and dust.
- 4.4 Furthermore, additional regulation is neither effective nor efficient, given that the replacement and removal of UPSS are already adequately controlled through HSNO (including the requirement to comply with HSNO COP 45 and the NES which requires compliance with the MfE Guidelines: Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in New Zealand (including Module 7: Site Management). There is no need for a third layer of regulation to be added.

Relief Sought:

(additions underlined, deletions in ~~strikethrough~~):

- 1. Provide for earthworks associated with the installation and removal of an underground petroleum storage system as a permitted activity in all zones and ensure that the standards are not applicable to such activities. This can be achieved by making the following changes to the earthworks rules in the working zones:**

Rule 6G.1.14 Earthworks

1. *Earthworks shall not be undertaken:*

- a) *Within 20 metres of a waterbody, including wetlands and coastal water, except that this standard shall not apply in respect of activities associated with the formation or maintenance of the watercourse or stormwater control.*
- b) *Within fill control areas unless provision is made to drain the total sub catchment contributing to the flood control area and that the stormwater can be drained in less than four hours*

2. *In all other areas, no earthworks shall involve the disturbance of more than 100m3 (volume) of land and shall alter the existing ground level by more than 1.0 metre, measured vertically, in any 10 year period. Except that this earthworks standard shall not apply, in respect of earthworks associated with approved building developments, provided that the earthworks do not extend more than 2.0 metres beyond the foundation line of the building in any 12 month period.*

3. *Earthworks for road maintenance activities within road reserves are exempt from complying with standards 6G.1.14.1 and 6G.1.14.2. The removal or replacement of fuel storage systems are exempt from complying with 6G.1.14.2.*

4. *The Accidental Discovery Protocol, set out in Schedule 10.2, shall be followed.*

2. **Alternatively, the definition of earthworks could be amended as follows:**

Earthworks means any alteration to the land contour or disturbance of land including the deposition of cleanfill and the excavation and backfilling or recompaction of existing natural ground, but excludes cultivation and domestic gardening. The limits on earthworks in the standards apply to any earthworks within any 5 year period except in relation to overflow paths, ponding areas and the River Corridor and do not apply to earthworks undertaken in association with the removal or replacement of fuel storage systems.

- **THE OIL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION. IF OTHERS MAKE A SIMILAR SUBMISSION, THE OIL COMPANIES WOULD NOT BE PREPARED TO CONSIDER PRESENTING A JOINT CASE AT ANY HEARING.**
- **THE OIL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.**
- **THE OIL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THE SUBMISSION THAT—
(A) ADVERSELY AFFECTS THE ENVIRONMENT; AND**

**(B) DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE
COMPETITION.**

Dated at TAKAPUNA this 1st day of March 2013

Signature for and on behalf of
The Oil Companies:



Kathryn Lacey
Planner

Address for service:

BURTON PLANNING CONSULTANTS LIMITED
PO Box 33-817
Takapuna, 0740
Auckland

Attention: Kathryn Lacey

Phone: (09) 917-4302
Fax: (09) 917-4311
E-Mail: klacey@burtonconsultants.co.nz