

# SECTION 14: HAZARDOUS SUBSTANCES

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# 14. HAZARDOUS SUBSTANCES

## 14.1 Introduction

A range of substances used in business, industry and agriculture, are, by their nature, capable of causing damage to property, the environment or human health. These substances are usually referred to as hazardous substances.

The potential effect of a hazardous substance is related to such factors as:

- its hazardous characteristics, being whether it is toxic, ecotoxic, explosive, flammable, corrosive or oxidising;
- the quantity and form in which it is used, stored, disposed and transported;
- the method of management in terms of how it is used, stored, disposed and transported;
- its siting in relation to other hazardous substances and environmentally sensitive areas, for example, residential areas and water bodies.

Common examples of hazardous substances are strong acids and alkalis in the industrial and commercial sector, LPG and petroleum hydrocarbon fuels and lubricants, solvents, paints, pool chemicals and household cleaning agents, which are in widespread use across parts of the City. All sectors generate waste which also contain hazardous substance residues, such as industrial processing wastes, packaging and containers, dead batteries and waste oil, paints and solvents, surplus agrichemicals and garden sprays.

The Hazardous Substances and New Organisms Act 1996 (usually referred to as the HSNO Act), provides the comprehensive framework for controlling hazardous substances during their whole life cycle, from manufacturing and importing a substance, its transportation and storage, through to its use and disposal. It is a 'cradle to grave' approach intended to ensure that the specific adverse effects posed by hazardous substances are managed consistently and comprehensively.

Every hazardous substance must have an approval under the HSNO Act, and controls are then placed on the substance to manage the risks of the substance. The HSNO Act controls aim to:

- Reduce the likelihood of unintended occurrence of a hazardous event or exposure; and
- Limit the adverse effects arising from that event or exposure.

In general, hazardous facilities (which in this context refers to the use of land for activities that involve hazardous substances) that comply with the HSNO Act requirements for the management of hazardous substances should not have significant actual adverse effects on the environment.

Complimentary to the HSNO Act provisions, the City Council is empowered, under section 31 of the RMA, with the function of controlling land use for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances. The RMA provisions enable Councils to control the actual and potential adverse effects of hazardous substances or focus on issues which are not within the scope of the HSNO Act such as cumulative risk, reverse sensitivity and potential effects on the natural environment and land use activities.

In the Regional Policy Statement (RPS) of Manawatu-Wanganui Regional Council's One Plan, the City Council is identified, in Policy 3-10, as the most appropriate authority to develop a policy and methods framework to control land for the purpose of preventing or mitigating the adverse effects arising from storage, use and transport of hazardous substances. The Regional Council is responsible for developing objectives, policies and methods to control the use of land for the purpose of preventing or mitigating the adverse effects of the disposal of hazardous substances.

The principle upon which this section of the Plan has been developed is that hazardous facilities are generally adequately managed through the provisions of the HSNO Act, and compliance with this legislation will mostly ensure that any adverse effects arising from the manufacture, storage, use or transport of hazardous substances will be contained within the hazardous facility site. Duplication of the HSNO Act requirements in the Plan is not efficient and does not add any effective control over hazardous substance management. However, the provisions do give the Council the ability to impose more stringent requirements than the HSNO Act where it is appropriate to protect particularly sensitive environments, to manage cumulative effects of hazardous facilities or, in relation to major hazardous facilities (a term which is defined in the Definitions section of the Plan), to minimize the potential for adverse effects impacting on the environment or the community from large-scale or higher risk activities.

In the case of Major Hazardous Facilities, these will be assessed on a case-by-case basis through the resource consent process as to their appropriateness and to address their potential for adverse effects on the environment.

## 14.2 Resource Management Issues

The following resource management issues have been identified regarding the use, storage, and transportation of hazardous substances within the City:

1. The inappropriate location and management of hazardous facilities has the potential to result in damage or harm to property, the environment and health and wellbeing of the City's residents.
2. The operation of existing activities that utilize hazardous substances in compliance with the relevant regulations can be compromised by sensitive activities, such as residential activities, occurring in close proximity to them.
3. There is a need to improve the level of understanding within the community as to how hazardous facilities are regulated, inspected and monitored.

### **Explanation**

*Three issues have been identified relating to hazardous substances. The first relates to the potential harm to property, the environment and public health that can result from the inappropriate location and management of hazardous facilities. This 'location' element of this issues applies to the potential expansion of existing facilities and to new facilities in the City, while the 'management' element relates to both existing and new facilities. As discussed in the introduction above, the HSNO Act is the primary legislation that controls the manufacture, import, transportation, storage, use and disposal of hazardous substances, and it is the Council's view that the HSNO Act adequately manages most hazardous facilities. It is unnecessary to duplicate the HSNO Act provisions in the District Plan, and more appropriate to focus on activities that have potential adverse effects beyond the control of the HSNO Act. This issue is focused on ensuring that, notwithstanding the HSNO Act and other workplace safety regulation, the potential impacts of certain types or scale of hazardous facilities and their location still need to be considered by Council.*

*The second issue acknowledges the fact that hazardous substances of various kinds are in widespread use in the District and are an essential part of many activities and industries. As such hazardous facilities can make a positive contribution to the social and economic wellbeing of the City's residents. The Council accepts that provided the use of hazardous substances is undertaken in accordance with HSNO Act and other relevant workplace safety regulation, there will be no undue risk to the community. However, land use interfaces surrounding existing hazardous facilities require management to ensure that activities legitimately utilizing hazardous substances are not compromised by more sensitive activities establishing in close proximity to them.*

*The final issue relates to how the community perceives the management of hazardous substances and hazardous facilities. The relationship between the HSNO Act, other workplace safety law and the RMA can appear complex, yet in fact gives the Council the opportunity to focus its environmental management efforts on developing a management framework that protects specific parts of our environment in a way that the HSNO Act and other workplace safety law cannot. Ensuring that the public understands the role of the HSNO Act and the Plan in the management of hazardous facilities as well as the responsibilities of the other agencies and government departments is an issue that needs to be addressed.*

## 14.3 Objectives and Policies

Within the broad framework of the City View objectives in Section 2, the following specific objectives and policies have been identified:

### OBJECTIVE 1

**To prevent or mitigate adverse effects on property, the environment and the health of City residents associated with the manufacture, use, storage or transportation of hazardous substances within the City.**

### POLICIES

- 1.1 To ensure that the design, management and location of hazardous facilities within the City are managed in order that the adverse effects on people, property and the environment associated with the manufacture, use, storage or transportation of hazardous substances are prevented or mitigated.
- 1.2 When making decisions on resource consent applications for Sensitive Activities, have particular regard to avoiding the potential for reverse sensitivity effects on the operation of legitimately established hazardous facilities.
- 1.3 When making decisions on resource consent applications for hazardous facilities, have particular regard to the following matters:
  - a) A risk assessment shall be undertaken which includes the matters listed in Section 5.4(i)(b).
  - b) To avoid, remedy or mitigate the potential effects of the activity on people, property and environmentally sensitive areas in the event of an accidental or unintentional release, or loss of control, of a hazardous substance.
  - c) To require that site and operational management plans and systems, including monitoring and maintenance schedules, and the design and construction of any facility, assist in preventing the accidental or unintentional release, or loss of control, of hazardous substances.
  - d) To require that site and operational management plans and systems, and the design and construction of any facility, assist in remedying or mitigating adverse effects on property, the environment and people where an accidental or unintentional release or loss of control, of hazardous substances has occurred.
  - e) To require the provision of adequate emergency response plans that include measures to deal with and prevent or mitigate the re-occurrence of the adverse effect associated with the accidental or unintentional release, or loss of control, of hazardous substances.
  - f) To require that waste management plans ensure the appropriate disposal of any waste hazardous substances.
- 1.4 The City Council shall monitor new and existing hazardous facilities to ensure that the Plan's provisions efficiently interact with the other regulations (including the Hazardous Substances and New Organisms Act 1996) that manage the manufacture, storage, use and transportation of hazardous substances.
- 1.5 To avoid duplication of the regulation of activities controlled by the Hazardous Substances and New Organisms Act 1996 and other workplace safety law by:
  - a) Generally allowing activities that meet the relevant requirements of the HSNO Act and other workplace safety law; and
  - b) Only requiring resource consents for activities that may have actual and potential effects that are cumulative, or where there is significant potential risk of adverse effects on the environment.

### **Explanation**

*The Council acknowledges that the HSNO Act is the primary legislation that controls the manufacture, import, transportation, storage, use and disposal of hazardous substances, and that it generally adequately manages hazardous facilities. The avoidance of duplication between the District Plan and the HSNO Act in respect of the management of hazardous facilities will ensure that the Council's functions are appropriately and efficiently deployed within an appropriate framework for the management of hazardous facilities. The wording of the policies also reflects the fact that legislation in respect of workplace safety is evolving, and that the management of hazardous substances is subject to requirements under other legislation.*

*There are a range of facilities within the City which are involved in the manufacture, use, storage or transportation of hazardous substances. Whilst compliance with the HSNO Act will generally ensure that any adverse effects arising from the accident or incident will be internalized within the hazardous facility site, the District Plan is able, under the provisions of the RMA, to apply additional controls to ensure that the appropriate location and design of hazardous facilities is achieved. This is signaled by Policy 1.1.*

*The management of the potential for the legitimate operation of existing hazardous facilities to be impacted by encroachment of sensitive activities, such as residential activities, is addressed in Policy 1.2. The implementation of this policy is achieved through other sections of the Plan. For example, in the Industrial Zone, where many hazardous facilities and Major Hazardous Facilities locate, provisions ensure that development of residential dwellings in the Industrial Zone requires a resource consent as a discretionary activity, allowing appropriate consideration and implementation of Policy 1.2.*

*Policy 1.3(a) to (f) provides decision makers with a number of tools against which to assess hazardous facilities that either fail to comply with the performance standards for permitted activities, or which are classed as Major Hazardous Facilities. Sub clause (a) (i) to (v) provides the risk assessment framework, requiring assessment of details such as the risk or effect on neighbouring properties, and the impacts of discharges of contaminants beyond the site, these being areas of assessment and control that are specific to territorial authorities under the RMA.*

*Policy 1.4 states the Council's intention to monitor existing and new hazardous facilities to ensure that the District Plan's provisions operate appropriately alongside, and do not duplicate, the provisions of the HSNO Act and other workplace safety law.*

*Policy 1.5 states the Council's intention to avoid duplication of regulation of activities controlled by the HSNO Act. One method by which this policy is implemented is through the development of a relatively permissive District Plan regime that does not seek to control hazardous facilities or substances that the HSNO Act effectively manages. Sub-clause (b) of Policy 1.5 demonstrates the Council's commitment to ensuring that in circumstances where it is necessary, the Council can apply additional environmental controls to protect the quality of the environment and public health and safety.*

## **14.4 Methods**

- Provision of rules and the use of performance standards to ensure that additional precaution is exercised in the manufacture, use and storage of hazardous substances in sensitive environments. The rules acknowledge the HSNO Act as providing the appropriate regulation to manage the effects of hazardous substances in most instances.
- The HSNO Act requires that facilities may require a location test certificate, approved handler test certificates and/or a stationary container test certificate, dependent on the type and quantity of hazardous substances held at the site.
- Other legislation, such as the Building Act 1991, Health and Safety and Employment Act 1992, the Transport Act 1992 and the Civil Defence Act 1983, include provisions relating to the use, storage, disposal or transportation of hazardous substances.
- Implementation of relevant by-laws, such as the Trade Waste By-law.
- Community education, particularly within the business and industry sectors, on the role and responsibility of the HSNO Act, the responsibilities of Council, and the roles and responsibilities of other agencies in the management and administration of hazardous substances.
- Monitoring will be undertaken to ensure that the conditions of resource consents are complied with. In general, the appropriate authorities to direct complaints regarding the location or appropriate management of hazardous facilities (aside from any relating to the rules or standards in this section of the Plan) will be the Environmental Protection Authority, the Ministry of Business, Innovation and Employment, or Worksafe NZ.

- The Manawatu-Wanganui Regional Council also has involvement in the management of hazardous substances. The Regional Council regulates water quality, air quality and discharges to land, as well as assisting in the safe disposal of hazardous substances.

## 14.5 Rules: Permitted Activities

### R14.5.1 PERMITTED ACTIVITIES

The use, storage or transportation of hazardous substances in Hazardous Facilities (excepting Major Hazardous Facilities, which are subject to R14.6.1) is a Permitted Activity subject to compliance with the relevant Performance Standards set out below:

#### Performance Standards

The following Performance Standards shall apply to the management of hazardous substances within a hazardous facility:

- With regard to the use, storage and transportation of agrichemicals, compliance with NZS8409:2004 Management of Agrichemicals

#### **NOTE TO PLAN USERS**

The use, storage and transportation of hazardous substances in the City must be in accordance with the requirements of the Hazardous Substances and New Organisms Act 1996, including relevant group standards made under this legislation.

Any discharges of hazardous substances from a hazardous facility must not discharge into or onto air, land and/or water (including groundwater and potable water supplies) unless the discharge is otherwise authorized by a rule in a Regional Plan or a resource consent granted by the Regional Council.

Any discharge of hazardous substances from a hazardous facility into Council's Trade Waste Sewer system or Stormwater system will also need to be in accordance with Council's relevant bylaws.

#### **Explanation**

*The HSNO Act is the primary legislation that controls the manufacture, import, transportation, storage, use and disposal of hazardous substances, and it generally adequately manages hazardous facilities. The Permitted Activity rule recognizes this, and limits Council's oversight to ensuring permitted activities comply with relevant controls and standards.*

## 14.6 Discretionary Activities

### R14.6.1 MAJOR HAZARDOUS FACILITIES

Major Hazardous Facilities are Discretionary Activities.

### R14.6.2 HAZARDOUS FACILITIES THAT DO NOT MEET PERMITTED ACTIVITY STANDARDS

The use, storage or transportation of hazardous substances in Hazardous Facilities which do not comply with R14.5.1 are Discretionary Activities.

#### **Explanation**

*Provisions controlling the establishment of hazardous facilities within a zone do not cover the complete range and scale of those activities that may wish to site within that zone. These rules allow the Council to assess hazardous facilities that do not meet the permitted activity standards, and Major Hazardous Facilities, on a case by case basis, recognizing that there may be significant actual or potential adverse effects beyond the application site. The Council is prepared to approve resource consents for Major Hazardous Facilities where it is satisfied that the risks to neighbours, the surrounding environment and the City at large will be avoided, remedied or mitigated.*

#### **NOTE TO PLAN USERS**

Resource consent applicants are required to refer to the additional information requirements for the use, storage or transportation of hazardous substances, within Section 5.4(h) of this Plan.