

IN THE MATTER OF

The Resource Management Act 1991
(RMA)

AND

IN THE MATTER OF

The Environment Canterbury: Proposed
Canterbury Land and Water Regional
Plan (PCLWRP)

HEARD ON

27th March 2013

**RESPONSE TO QUESTIONS ASKED IN RELATION TO EVIDENCE PRESENTED BY THE
FERTILISER ASSOCIATION OF NEW ZEALAND
AT HEARING SESSION BEGINING 9:00 A.M., ON 27TH MARCH 2013**
(Submitter number: 239)

Dated 12th April 2013

A) Executive Summary

1. The Commissioners have asked The Fertiliser Association (FANZ) if there are any remaining issues in relation to Rule 5.164, if the Officer report recommendation is accepted.
2. Part of the original submission by the Fertiliser Association was the request that fertiliser products should be exempt from Rules 5-162; 5-163 and 5-164 subject to compliance with Fertiliser Group Standards under the Hazardous Substances and New Organisms Act 1996
3. Accepting the Officer Report, rule 5.164 applies to storage and use of hazardous substances 'other than in a portable container', where portable container *"means one or more containers of petrol, kerosene or diesel used for refuelling and the container(s) is fixed to a vehicle, towed by a vehicle or transported by helicopter, but does not comprise part of the inbuilt fuel system required to power a vehicle or machine"*
4. Rule 5.164 is interpreted to apply to fertiliser products as stored and used on farms because most fertiliser products have one or more HSNO classification codes assigned to them within the broad classifications used to define hazardous substances.
5. If the rule is meant to be restricted to liquid fuel products petrol, kerosene and diesel, then FANZ would request that the rules are clear from the outset that they apply to liquid fuels, so that fertiliser and other products with a HSNO classification code, would not be inadvertently captured by the rules.
6. In the event it is intended to apply to all substances with HSNO classification codes assigned, then FANZ identifies there are some inconsistencies with requirements of the Fertiliser Group Standards, and no clear reason for separate, more restrictive requirements to apply, with the possible exception of conditions under Rule 5.164 bullet 5 and bullet 6, which relate to precautionary exclusion areas around community drinking water and around a water body or water bore used for abstraction, which do not feature in a Fertiliser Group Standards.
7. As an alternative, compliance with Fertiliser Group Standards will provide nationally consistent provisions for the responsible storage, transport and use of fertilisers without the need for Rule 5-164 to apply to fertiliser, subject to the intentions of Bullets 5 and 6 of Rule 5-164.

B) Background :

8. The Fertiliser Association presented evidence at the Group 1 Hearing on the Proposed Canterbury Land Water Regional Plan, with expert planning evidence present by Mr. Chris Hansen.
9. Part of the original submission by the Fertiliser Association and acknowledged in Mr Hansen's evidence at paragraph 147, was the request that fertiliser products should be exempt from Rules 5-162; 5-163 and 5-164, subject to compliance with Hazardous Substances and New Organisms Act 1996.
10. In the case of Rule 5-164, the submission sought exemption from Conditions 2 – 6, subject to complying with requirements under the Hazardous Substances and New Organisms Act 1996, as per condition 1 of the rule.

11. Rule 5-162 provides conditions where: *“The use of land for the storage in a portable container and use of a hazardous substance listed in Part A of Schedule 4 is a permitted activity provided the following conditions are met:”*
12. Rule 5-163 provides for: *“The use of land for the storage in a portable container and use of a hazardous substance listed in Part A of Schedule 4 that does not meet one or more of the conditions in Rule 5.162”*
13. Rule 5-164 provides conditions where: *“The use of land for the storage, other than in a portable container, and use of a hazardous substance listed in Part A of Schedule 4 is a permitted activity provided the following conditions are met:”*
14. Mr Hansen’s evidence noted in paragraph 144 that the Officer Report responded;

Officer Report Comment and Recommendation: The Officer Report states: *“Two fertiliser companies request that fertiliser be exempt from this Rule if they meet HSNO requirements. Their submission refers to the storing of fertiliser in bags within paddocks possibly being caught by this rule presumably on the basis that a bag is a portable container. It is unlikely that this is the intention of the Rule. Rather the reference to portable containers is assumed to apply only to containers of petrol, kerosene or diesel for refuelling (as is the case in the NRRP). On this basis fertiliser in bags would not fall under this Rule, but would fall under Rule 5.164 which covers use of land for storage. Amendment of Rule 5.162 is not necessary. However to avoid any misinterpretation a definition of portable container is recommended to be included.”*

The Officer Report recommends the following definition: *“**Portable container** means one or more containers of petrol, kerosene or diesel used for refuelling and the container(s) is fixed to a vehicle, towed by a vehicle or transported by helicopter, but does not comprise part of the inbuilt fuel system required to power a vehicle or machine.”*

15. In addition to defining a portable container, the Officer Report has recommended amendments to these rules as follows;

5.162 *The use of land for the storage in a portable container and use of a hazardous substance listed in Part A of Schedule 4 is a permitted activity provided the following conditions are met:*

1. *The aggregate quantity of specified hazardous substances stored on a site in one or more portable containers does not exceed ~~2,000~~ 5,000 litres;*
2. *The container(s) are located in an area, or a structure, that will contain a leak or spill of the substance and will allow the spilled substance to be collected*
3. *Equipment that is suitable to absorb any leak or spill of the substance (a “spill kit”) is located with the container(s) at all times, along with instructions on how to use the spill kit;*
4. *The container(s) are not located within*
 - (a) *20 m of a surface water body or a bore;*
 - (b) *a group or community drinking water supply protection area as set out in Schedule 1;**and*
5. *The container(s) do not remain on a site for more than 90 days in any consecutive 12 month period.*

That as a consequential amendment the following definition of portable container be added into Section 2.10 of the pLWRP:

Portable container means one or more containers of petrol, kerosene or diesel used for refuelling and the container(s) is fixed to a vehicle, towed by a vehicle or transported by helicopter, but does not comprise part of the inbuilt fuel system required to power a vehicle or machine.

5.163 be retained without amendment.

5.164 The use of land for the storage, other than in a portable container, and use of a hazardous substance listed in Part A of Schedule 4 is a permitted activity provided the following conditions are met:

1. All hazardous substances on a site are stored and used in accordance with requirements under the Hazardous Substances and New Organisms Act 1996. Evidence of compliance with these requirements shall be made available to the CRC upon request;
2. A current inventory of all hazardous substances on the site is maintained, and a copy of the inventory shall be made available to the CRC or emergency services on request;
3. For hazardous substances stored or held on or over land, all areas or installations used to store or hold hazardous substances are inspected at least once per month or annually if the site is remote and unstaffed^{s20}, and repaired or maintained if any defects are found that may compromise the of the hazardous substance;
4. For hazardous substances stored or held in a container located in or under land, ~~stock reconciliation is undertaken:~~
 - ~~(a) for service stations storing or holding fuel:
If the stock reconciliation of product volumes stored in each container located in or under land at a service station shows a discrepancy of greater than 0.5% over three consecutive days or greater than a 1,000 litre loss in a single day, a Product Loss Investigation Procedure shall be implemented immediately.
This procedure shall involve the following key steps:
Site Level check, including review of data and calculations and reconciliation actions;
Where the cause of concern has not been identified by (i), an Engineering Check of the reconciliation equipment and observation wells;
Where the cause of concern has not been identified by (ii), a Container Test;
A copy of the procedure shall be kept on site at all times;~~^{s21}
 - (a) if there has been any physical loss of product ~~identified by the above procedure~~, CRC shall be notified within 2 working days unless the loss occurred from a container in any area listed in condition (5), in which case notification shall occur within 24 hours of confirmation of the loss;
 - ~~(b) for all other sites storing any hazardous substances:
Stock reconciliation is undertaken within 24 hours of a substance being delivered and thereafter on a fortnightly basis. If the stock reconciliation shows a discrepancy for the measurement period of more than 100 litres or 0.5%, whichever is the smaller, the CRC shall be notified within 2 working days unless the loss occurred from a container in any area listed in condition (5), in which case notification shall occur within 24 hours; and~~^{s22}
 - (b) records of recent^{s23} stock reconciliations ~~over the past three months~~^{s24} shall be made available to the CRC upon request. If requested, a copy of the stock reconciliation and the most recent certification of the container shall be provided to the CRC within five working days;
5. For substances stored within a group or community drinking water supply protection as set out in Schedule 1:
 - (a) all hazardous substances on a site are stored under cover in a facility which is designed, constructed and managed to contain a leak or spill and allow the leaked or spilled substance to either be collected or lawfully disposed of;

(b) spill kits to contain or absorb a spilled substance are located with storage facility and use areas at all times and train staff to manage spilled substances; and

6. Except where the storage was lawfully established before 4 July 2004 and the maximum quantity stored has not increased since that date, or the storage relates to transformers and other equipment associated with electricity infrastructure,⁵²⁵ the substances shall not be stored within:

(a) 20 m of a surface water body or a bore used for water abstraction;

(b) 250 m of a known active fault that has a recurrence period of less than 10,000 years, and the land is:

(i) over an unconfined or semi-confined aquifer; or

(ii) within 50 m of a permanently or intermittently flowing river or a lake.

B) Question Asked ;

16. The Commissioners asked :

If the Officer Report recommendation for the new definition of 'Portable Container' applies are there any particular concerns remaining with the recommended amendments to Rule 5-164?

C) Response:

17. If the Officer report recommendation regarding a definition for a portable container applies, it largely addresses concerns in relation to Rules 5-162 and 5-163, however as noted in Mr. Hansen's evidence (paragraph 150) that;

"it seems an awkward provision if it applies to the broad headings of hazardous substance, only to be narrowed to fuel products by definition of a portable container."

18. Rule 5-164 applies to storage, other than in a portable container, and use of a hazardous substance listed in Part A of Schedule 4, which says.

Part A – Hazardous Substances

Hazardous substance means, unless expressly provided otherwise by regulations, any substance defined in the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 —

(a) With one or more of the following intrinsic properties:

(i) Explosiveness:

(ii) Flammability:

(iii) A capacity to oxidise:

(iv) Corrosiveness:

(v) Toxicity (including chronic toxicity):

(vi) Ecotoxicity, with or without bioaccumulation; or

(b) Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition.

19. The HSNO Fertiliser Group Standards include classifications which lie within these groups and so use of land for storage or use of fertiliser products by farmers would appear to be captured by this rule. By way of example, HSNO Classification codes assigned to superphosphate are 6.1D,6.3B,6.4A,9.3B where;

6.1D : Substances that are acutely toxic - Harmful (if superphosphate is eaten)

6.3B : Substances that are mildly irritating to the skin

6.4A : Substances that are irritating to the eye
9.3B : Substances that are ecotoxic to terrestrial vertebrates

20. Within this context it is considered that;

Rule 5-164

Bullet 1 is appropriate;

Bullet 2 is more rigorous than conditions required by the HSNO Group Standards for Fertilisers;

As a condition for a farmer to store and use of fertiliser it would provide no meaningful benefit above the HSNO Fertiliser Group standards.

Bullet 3 contains conditions not required by the HSNO Fertiliser Group Standards.

As a condition for a farmer to store and use fertiliser, it would not be onerous to comply, unless 'inspections' were required monthly by a qualified practitioner in which case it would be both onerous and unnecessarily expensive, and the provision would provide no meaningful benefit above the HSNO Group standards, which includes requirements for the storage above ground, of certain types of substances including pooling substances which exceed threshold quantities and have specific HSNO classification code assigned to it.

Bullet 4 would not apply to most farming situations for fertiliser storage or use because Bullet 4 applies to storage in a container in or under the ground. HSNO Fertiliser Group Standards does include requirements for underground storage of pooling substances which exceed threshold quantities and have specific HSNO classification code assigned to it.

Bullet 5 is more rigorous than conditions required by the HSNO Fertiliser Group Standards, which do not make reference to drinking water supply areas.

Requiring undercover storage conditions within a group or community drinking water supply protection area, as set out in Schedule 1, may or may not be appropriate depending on the product and site situation.

Bullet 6 is more rigorous than conditions required by the HSNO Fertiliser Group Standards, which does not refer to bores or surface water, or active faults and aquifers

Condition 6 (b) (i) requiring that a hazardous substance shall not be stored over an unconfined or semi-confined aquifer, will be difficult to comply with, if a farmer requires a short term storage of fertiliser product with a hazardous substance classification code assigned to it.

21. It is not clear the conditions of Bullets 5 and 6 (or Rule 5-164 itself) were intended to apply to fertiliser products.

22. For the use of land for storage and use of fertiliser by farmers, it is not clear, with the exception of Bullets 5 and 6, why the conditions for permitted activity should be more rigorous than those which apply under the Fertiliser Group Standards, particularly as the Fertiliser Group Standards apply a nationally consistent regulation which has been developed with the end user in mind.

D) Further considerations

23. It was discussed during the Hearing presentation on 27th March, that many District or City councils have introduced rules for managing Hazardous Substances including tables providing conditions for permitted activity and by collectively referencing broad HSNO classification codes have inadvertently captured fertiliser use.
24. The request to exempt fertiliser storage and use, subject to complying with the Fertiliser Group Standards, is a solution which has been presented to district councils. An example is presented below (see Bullet v), where Dunedin City Council has amended its proposed rule accordingly.

http://www.dunedin.govt.nz/__data/assets/pdf_file/0006/271428/Section-17-Hazards-reformatted.pdf

July 2012 Dunedin City District Plan
Hazards, Hazardous Substances and Earthworks 17:17

Rule 17.5.1 Permitted Activities (*Policy 17.3.8*)

The following activities are permitted activities:

- (i) The storage and use of hazardous substances for domestic purposes, associated with a lawfully established residential activity, excluding home occupation. The hazardous substance(s) must form part of a consumer product intended for domestic use. The product must be stored in the container or packaging in which it was sold, and used in accordance with the manufacturer's instructions. *[Amended by Plan Change 13, 1 July 2012]*
- (ii) The storage and use of fuel and other substances that are contained in the fuel system, electrical system or control system of motor vehicles, boats, aircraft and small engines. *[Amended by Plan Change 1, 1 July 2012]*
- (iii) The storage and use of agrichemicals within the Group 4: Rural/Rural Residential Zone, in accordance with NZS8409:2004. *[Inserted by Plan Change 1, 1 July 2012]*
- (iv) The storage and use of Class 3 fuels within the Group 4: Rural/Rural Residential Zone in accordance with the Environmental Protection Agency's Approved Practice Guide for Above-Ground Fuel Storage on Farms, September 2010. *[Inserted by Plan Change 13, 1 July 2012]*
- (v) The storage and use of fertiliser within the Group 4: Rural/Rural Residential Zone in accordance with the:
 - Fertiliser (Corrosive) Group Standard HSR002569, and
 - Fertiliser (Oxidising) Group Standard HSR002570, and
 - Fertiliser (Subsidiary Hazard) Group Standard HSR002571, and
 - Fertiliser (Toxic) Group Standard HSR002572, and
 - FertResearch's Code of Practice for Nutrient Management 2007 *[Inserted by Plan Change 13, 1 July 2012]*
- (vi) The storage and use of transformer cooling oils in electricity transformers. *[Inserted by Plan Change 13, 1 July 2012]*
- (vii) The transit and two-hour storage maximum of tracked hazardous substances transit and 72-hour storage maximum of non-tracked hazardous substances within

the Port 1, Port 2 and Industrial 1 Zones. *[Inserted by Plan Change 13, 1 July 2012]*

- (viii) The storage of hazardous substances (excluding fixed installations) within the Group 6: Port Zone with either a Hazardous Substance Location Certificate or Transit Depot Certificate issued pursuant to the Hazardous Substances (Classes 1 to 5) Regulations 2001 and for Classes 6, 8, 9 in compliance with the HSNO Act 1996. *[Inserted by Plan Change 13, 1 July 2012]*.
- (ix) Unless provided for by Rules 17.5.1(i)-(viii), the storage, use, or transportation of hazardous substances not exceeding the quantity limits and other requirements stipulated in Table 17.1.
[Amended by Plan Change 13, 1 July 2012]

E) Summary

- 25. Most fertiliser products have HNSO classification codes assigned to them and so unless made exempt, will be captured by rules which apply to hazardous substances.
- 26. Rule 5-164 as recommended by the Officer Report applies to storage and use of hazardous substances not in portable containers, and so is assumed to apply to fertiliser products. (**Portable container** means [in essence] *containers of petrol, kerosene or diesel*)
- 27. Aspects of Rule 5-164 as discussed above are not appropriate for routine fertiliser storage and use by farmers.
- 28. As an alternative, Fertiliser Group Standards will provide nationally consistent provisions for the responsible storage, transport and use of fertilisers without the need for Rule 5-164 to apply to fertiliser, subject to the intentions of Bullets 5 and 6 of Rule 5-164.

Thank you for the opportunity to provide answers to the questions raised at the hearing on the 27th March.

DATED this day 12th April 2013.



Greg Sneath

For: the Fertiliser Association of New Zealand