NOTICE OF SUBMISSION BY THE OIL COMPANIES: Z ENERGY LIMITED, MOBIL OIL NEW ZEALAND AND BP OIL NEW ZEALAND LIMITED ON PROPOSED PLAN CHANGE 1 (POST OPERATIVE TIDY UP) TO THE TARARUA DISTRICT PLAN

To: Manager of Regulatory Services
    Tararua District Council
    PO Box 115
    DANNEVIRKE 4942

Via email: info@tararua_dc.govt.nz

Submitter:
Z Energy Limited
PO Box 2091
WELLINGTON

BP Oil NZ Ltd
PO Box 1859
WELLINGTON

Mobil
Mobil Oil NZ Ltd
PO Box 1709
AUCKLAND

Hereafter referred to as the “Oil Companies”

Address for Service:
BURTON PLANNING CONSULTANTS LIMITED
Level 1, 2-8 Northcroft Street
PO Box 33-817, Takapuna,
AUCKLAND 0740

Attention: David le Marquand

Phone: (09) 917-4303
Fax: (09) 917-4311
Email: dlemarquand@burtonconsultants.co.nz
File ref: 16/116
INTRODUCTION

1.1 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.

1.3 Within the Manawatu District, the Oil Companies own, operate and/or supply service stations, truckstops and supply some commercial customers.

THE SPECIFIC PROVISIONS OF PLAN CHANGE 1 (POST OPERATIVE TIDY UP) THAT THE OIL COMPANIES SUBMISSION RELATES TO ARE SUMMARISED AS FOLLOWS:

2.1 The Oil Companies are generally supportive of the suite of “tidy up” amendments included in Plan Change 1 and recognises the need for the Plan Change to appropriately provide for the imperatives required through National Policy Statements and Environmental Standards and the One Plan. In particular the Oil Companies wish to support the amendments proposed to address the deletion of the Hazardous Substances and Contaminated Land provisions and reliance on HSNO and NES for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011. District provisions are limited to controls based on amenity reasons.

HAZARDOUS SUBSTANCES

3.1 The Plan Change sets out the Council’s reasons for proposing to remove the hazardous substances provisions from the District Plan. The reasons include duplication of HSNO and presence of Regional Council functions and that these matters are otherwise generally regulated by other means. Powerco also notes proposed RMA reforms are intended to reduce regulation of hazardous substances at the district level. In relation to contaminated land issues, the Oil Companies support a rationalisation of regulation in this area. District councils’ administer the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS). There should only be a need for policy not rules. In this case, it is noted that there is already regional
policy in place on contaminated land. Regional Councils are responsible for discharges from such land. There is no need for district councils to include additional controls over and above the NESCS.

Relief Sought – HAZARDOUS SUBSTANCES

(additions underlined; deletions in strikethrough)

1. Retain the proposed amendments to remove overlapping functions for hazardous substances and contaminated land management as set out in section 3.3.3 of Plan Change 1, without further amendment as follows:

.1 THAT section 5.1.8.1 Introduction text (pages 5 - 22 and 5 - 23) be deleted and replaced with the following:

"5.1.8.1 Introduction

Numerous agencies share overlapping responsibilities for controlling the use, storage, transportation and disposal of hazardous substances and managing contaminants in the environment. Their statutory functions and responsibilities are derived from the following statutes and regulations:

- Health and Safety at Work Act 2015 and Regulations relating to hazardous substances (HSWA).

In terms of the latter (the NES Soils), these regulations are administered by the Council and relate directly to the Council's S31(1)(b)(ii) RMA function, namely "...the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land."
The NES Soil regulations apply when a person wants to carry out an activity specified in the regulations, on land as described in the regulations which is contaminated or potentially contaminated.

The activities covered in the regulations include removing or replacing a fuel storage system, soil sampling (to determine if the soil is contaminated or not), soil disturbance for a particular purpose, subdividing land or changing the use of the land where such change of use could be harmful to human health on land that is described in the Ministry for the Environment's Hazardous Activities and Industries List (commonly referred to as HAIL).

In terms of the former statutes (the HSNO and HSWA Acts), the HSNO Act will continue to be the primary legislation for the regulation of hazardous substances. Administered by the Environmental Protection Authority (EPA) the HSNO regulatory regime is responsible for:

- assessment and approval of all hazardous substances;
- classifying all hazardous substances;
- setting controls (EPA controls) that apply to all hazardous substances, including controls for labelling, material safety data sheets (MSDS), and disposal;
- setting content controls (i.e., allowable levels of hazardous substances) for substances that affect human health and safety and the environment (e.g., cosmetics, domestic cleaning products, and pesticides);
- setting controls for hazardous substances that adversely affect the environment;
- setting controls for hazardous substances that affect human health and safety used outside the workplace; and

Worksafe New Zealand, through the HSWA’s regulatory regime, is primarily responsible for regulating substances that affect human health and safety within the workplace, including:

- incorporating or referring to EPA controls, where appropriate;
- setting controls on the use, handling, generation, and storage of hazardous substances at the workplace;
quality assurance mechanisms, e.g. test certification; and

- generally regulating such substances within the legislative framework for work health and safety.

The HSWA (S212) enables regulations relating to hazardous substances to be implemented for a number of purposes, including (inter alia):

- prescribing controls to avoid or mitigate illness or injury to people or damage to the environment or chattels from any hazardous substance;
- prescribing requirements to manage any emergency involving a hazardous substance;
- prescribing systems for tracking hazardous substances, including requirements that—
  (i) the whereabouts of the substances be recorded at all times or from time to time;
  (ii) the quantity of the substances be recorded;
  (iii) a person be identified as being in charge of the substances;

When these HSNO and HSWA responsibilities are combined with the responsibilities of the Regional Council to manage hazardous substances and the discharge of contaminants into the environment, the Council considers there is no need or justification to provide any further regulations (rules) or other provisions in the District Plan in order to exercise its RMA S31(1)(b) functions.

.2 THAT standards (rules) 5.1.8.2, 5.1.8.3 and 5.1.8.4 (pages 5-23 to 5-25) be deleted.

.3 THAT Method 2.9.4.4(a) on page 2-84 be deleted and replaced with the following:

  "(a) District Plan Rules – None."

.4 THAT the Reasons section 2.9.4.5 of Policy 2.9.4 Hazardous Substances (pages 2-84 and 2-85) be amended, as follows:

"Numerous agencies share overlapping responsibilities for controlling the use, storage, transportation and disposal of hazardous substances. The Hazardous Substances and New Organisms Act 1996 (HSNO) is the primary legislation controlling hazardous substances. The Environmental Risk Management Authority (ERMA) is responsible for implementing, administering and monitoring the enforcement of the HSNO Act. Both the HSNO Act and the RMA are designed to protect human health and the environment from the effects of hazardous substances and to work in conjunction with one another. The HSNO Act aims to manage the intrinsic risks of hazardous substances and the end-use, export or disposal of such substances and applies to all hazardous substances. In other words, the HSNO Act sets "the bottom line" in terms of the standards that must be met in relation to hazardous substances. It is the responsibility of Regional and District Councils, under the RMA, to determine whether more stringent controls are also necessary (in addition to the provisions of the HSNO Act) in terms of the control of the use of the land in the region for the use, transport, storage and disposal of hazardous substances. Pursuant to section 62(1)(i) of the RMA, the MWRC's Regional Policy Statement and Proposed One Plan stipulate that the Regional Council will have responsibility for controlling the use of land for the disposal of hazardous substances and the District Council will have responsibility for the control of land for the use, storage and transport of hazardous substances.

Their statutory functions and responsibilities are derived from a number of statutes and regulations. These agencies and their responsibilities are described in the Introduction (5.1.8.1) of Section 5.1.8 Hazardous Substances of this Plan."
When the responsibilities of these statutory bodies are combined with the responsibilities of the Regional Council to manage hazardous substances and the discharge of contaminants into the environment, the Council considers there is no need or justification to provide any further regulations (rules) or other provisions in the District Plan in order to exercise its RMA S31(1)(b) functions.

2. Adopt any other such relief, including additions, deletions or consequential amendments necessary as a result of the matters raised in these submissions, as necessary to give effect to this submission.

4 THE OIL COMPANIES WISH TO BE HEARD IN SUPPORT OF THIS SUBMISSION

5 IF OTHERS MAKE A SIMILAR SUBMISSION, THE OIL COMPANIES WILL BE PREPARED TO CONSIDER PRESENTING A JOINT CASE AT ANY HEARING.

6 THE OIL COMPANIES COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

7 THE OIL COMPANIES ARE DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THE SUBMISSION THAT—

8 ADVERSELY AFFECTS THE ENVIRONMENT; AND

DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE COMPETITION.

Signature of person authorised to sign on behalf of the Oil Companies.

David le Marquand
Director

Dated this 25th day of November 2016