

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of under clause 14 of the Resource Management Act 1991

BETWEEN

FEDERATED FARMERS OF NEW ZEALAND
(INCORPORATED)

ENV-2011-AKL-000221

AND

FONTERRA CO-OPERATIVE GROUP
LIMITED

ENV-2011-AKL-000236

Appellants

AND

KAIPARA DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook sitting alone under section 279 of the Act

IN CHAMBERS at Auckland

CONSENT ORDER

Introduction

1. The Court has read and considered the appeals and the memorandum of the parties dated 27 September 2012.
2. Meridian Energy Limited, the Department of Conservation (Northland Conservancy), Horticulture New Zealand, Federated Farmers of New Zealand Incorporated and Northpower Limited have given notice of an intention to become parties to the appeals under s274. The Department of Conservation (Northland Conservancy) and



Northpower Limited have not signed the memorandum requesting this order as their interest in the proceedings does not extend to the subject matter of this order.

3. The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
 - (a) All parties with an interest in these proceedings have executed the memorandum requesting this order.
 - (b) All parties with an interest in these proceedings are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

4. Therefore the Court orders, by consent, that the appeals be allowed to the extent that the Kaipara District Council be directed to amend Rule 12.10.21 of Chapter 12 (Rural), Rule 14.10.21 of Chapter 14 (Business: Commercial and Industrial), and, Appendix 25D (Hazardous Substances) of the Proposed Kaipara District Plan ("**the Proposed Plan**") as shown in Annexure A to this Order.
5. The remainder of the appeals are extant, unless otherwise resolved by Consent Order granted by this Court.
6. There is no order as to costs.

DATED the 9th day of October 2012.



L J Newhook
Acting Principal Environment Judge



"Annexure A"

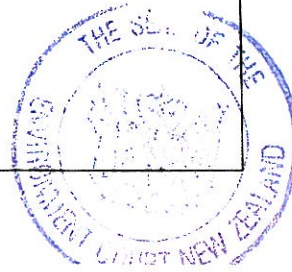
Rule	Parameter	Rural Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
12.10.21	Hazardous Substances	Any activity is a Permitted Activity if: a) Storage or use of hazardous substances complies with Table 2 (Permitted Conditions) in Appendix 25D: Hazardous Substances and either (b), (c), (d) or (e) below applies: b) The aggregate quantity of hazardous substances of any hazard classification managed as part of the activity is less than the quantity specified in Table 1 (Permitted Quantities) in Appendix 25D: Hazardous Substances (Permitted Quantities-Table 1); or c) The hazardous substances stored or used on the site are: i) Trade waste in a wastewater or waste treatment facility; or ii) Road materials within a road reserve; or iii) Domestic storage and use of consumer products for domestic purposes; or iv) Consumer products, held for resale to the public and stored in the manufacturers' packaging; or v) Gas or oil pipelines and ancillary equipment; or vi) Fuel or safety equipment in motor vehicles, aircraft, ships, boats or small engines; or vii) Small fireworks subject to the Hazardous Substances (Fireworks) Regulations 2001, or safety ammunition, in domestic quantities; or viii) Fire-fighting substances on emergency vehicles; or ix) Electricity transformers, capacitors and switches up to 600 litres; or x) Storage and application of agricultural and pesticides provided that NZS 8409:2004 Management of Agricultural and any applicable Regional Plan(s) are adhered to; or xi) Fertilizer temporarily stored (note: the storage is a temporary use) on-site, when stored and applied in accordance with the Fert Research Code of Practice for Nutrient Management (2007); or ii) The activity is a service station with a maximum storage for retail sale of any or all of: 100,000 litres of petrol in underground storage tanks; 50,000 litres of diesel in underground storage tanks; 6 tonnes of LPG (single vessel storage); or iii) Storage or use of hazardous substances-complexes-with-Appendix-25D;-Hazardous Substances-(Permitted-Conditions-Table-2); iv) It is an activity operating as part of a Dairy Factory that has a third party certified environmental management system in respect of environmental management of hazardous substances for the activity on the site (for example, ISO 14001: 2004 accreditation); or v) It is the activity of storage and disposal of animal effluent or the storage and disposal of milk on farms, when stored and disposed of in accordance with the provisions for the Regional Water and Soil Plan, or consent(s) granted pursuant to that Plan. Note 1: For the avoidance of doubt, the risks associated with the storage and disposal of animal effluent and the storage and disposal of milk are considered to be adequately managed through the provisions of the Regional Water and Soil Plan. Note 2: Compliance with the permitted activity criterion above does not remove the need for any necessary resource consents for hazardous substances to be obtained pursuant to any rule in any relevant Regional Plan.	Discretionary Activity	Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: i) The proposed site and layout, with a description of the nature and scale of the proposed facility and associated operations; ii) Location, type and quantities of hazardous substances involved; iii) Site drainage and off-site infrastructure (e.g. drainage type and capacity); iv) Identification of on-site hazards, failure modes and exposure pathways from the proposed facility including a description of the environment potentially affected; v) Transport of hazardous substances on and off the site, mode and route selection; vi) The sensitivity of the surrounding human, natural and physical environment, and proposed measures to protect them (including wildlife habitats and water bodies); vii) Separation distances from water bodies, coastal water, neighbouring activities and people potentially at risk from the hazardous facility, including consideration of the proximity to people-oriented activities (e.g. child care, education facilities, rest homes, hospitals); viii) Potential cumulative or synergistic effects, within the site and the locality; ix) The presence or otherwise of natural hazards which could adversely influence the inherent risks from a hazardous facility to the environment; x) The extent to which alternative locations and methods have been considered; xi) Hazard and risk analysis; xii) Management of wastes containing hazardous substances; xiii) Proposed contingency measures and emergency plans; xiv) Proposed monitoring and maintenance schedules; and xv) Any consultation, assessment or responses received from the New Zealand Fire Service.

Rule	Parameter	Business: Commercial and Industrial Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
14.10.21	Hazardous Substances	Any activity is a <i>Permitted Activity</i> if: a) Storage or use of hazardous substances complies with Table 2 (Permitted Conditions) in Appendix 25D: Hazardous Substances and either (b), (c), (d) or (e) below applies: b) The aggregate quantity of hazardous substances of any hazard classification managed as part of the activity is less than the quantity specified in Table 1 (Permitted Quantities) in Appendix 25D: Hazardous Substances (Permitted Quantities-Table-1); or c) The hazardous substances stored or used on the site are: i) Trade waste in a wastewater or waste treatment facility; or ii) Road materials within a road reserve; or iii) Domestic storage and use of consumer products for domestic purposes; or iv) Consumer products, held for resale to the public and stored in the manufacturers' packaging; or v) Gas or oil pipelines and ancillary equipment; or vi) Fuel or safety equipment in motor vehicles, aircraft, ships, boats or small engines; or vii) Small fireworks subject to the Hazardous Substances (Fireworks) Regulations 2001, or safety ammunition, in domestic quantities; or viii) Fire-fighting substances on emergency vehicles; or ix) Electricity transformers, capacitors and switches up to 600 litres; or x) Storage and application of agricultural and pesticides provided that NZS 8409:2004 Management of Agricultural and any applicable Regional Plan(s) are adhered to; or xi) Fertilizer temporarily stored (note: the storage is a temporary use) on-site, when stored and applied in accordance with the Fert Research Code of Practice for Nutrient Management (2007); or d) The activity is a service station with a maximum storage for retail sale of any or all of: 100,000 litres of petrol in underground storage tanks; 50,000 litres of diesel in underground storage tanks; 6 tonnes of LPG (single vessel storage); or e) Storage or use of hazardous substances-complexes-with-Appendix-25D-Hazardous Substances (Permitted-Conditions-Table-2); f) It is an activity operating as part of a Dairy Factory that has a third party certified environmental management system in respect of environmental management of hazardous substances for the activity on the site (for example, ISO 14001: 2004 accreditation); or g) It is the activity of storage and disposal of animal effluent or the storage and disposal of milk on farms, when stored and disposed of in accordance with the provisions for the Regional Water and Soil Plan, or consent(s) granted pursuant to that Plan. Note 1: For the avoidance of doubt, the risks associated with the storage and disposal of animal effluent and the storage and disposal of milk are considered to be adequately managed through the provisions of the Regional Water and Soil Plan. Note 2: Compliance with the permitted activity criterion above does not remove the need for any necessary resource consents for hazardous substances to be obtained pursuant to any rule in any relevant Regional Plan.	Discretionary Activity	Where an activity is not permitted by this Rule, Council will have regard to the following matters when considering an application for Resource Consent: i) The proposed site and layout, with a description of the nature and scale of the proposed facility and associated operations; ii) Location, type and quantities of hazardous substances involved; iii) Site drainage and off-site infrastructure (e.g. drainage type and capacity); iv) Identification of on-site hazards, failure modes and exposure pathways from the proposed facility including a description of the environment potentially affected; v) Transport of hazardous substances on and off the site, mode and route selection; vi) The sensitivity of the surrounding human, natural and physical environment, and proposed measures to protect them (including wildlife habitats and water bodies); vii) Separation distances from water bodies, coastal water, neighbouring activities and people potentially at risk from the hazardous facility, including consideration of the proximity to people-oriented activities (e.g. child care, education facilities, rest homes, hospitals); viii) Potential cumulative or synergistic effects, within the site and the locality; ix) The presence or otherwise of natural hazards which could adversely influence the inherent risks from a hazardous facility to the environment; x) The extent to which alternative locations and methods have been considered; xi) Hazard and risk analysis; xii) Management of wastes containing hazardous substances; xiii) Proposed contingency measures and emergency plans; xiv) Proposed monitoring and maintenance schedules; and xv) Any consultation, assessment or responses received from the New Zealand Fire Service.

25D Hazardous Substances

Table 1: Permitted Quantities by Zone

Hazardous substance Property and Class	HSNO Subclass	Industrial Zone	Rural Zone Commercial Zone Maori Purpose Zone	Residential Zone Estuary Estates Zone
Explosive 1	1.1 (all)	50kg	20kg	0
	1.2 (all)	500kg	200kg	0
	1.3 (all)	1,500kg	500kg	0
	1.2 or 1.3 with 1.1	50kg	20kg	0
Flammable 2 (gases) (Aerosols)	1.1 (all)	1,000kg or 2,000m ³	500kg or 1,000, 3	20kg or 40m ³
	2.1 (within 50m of m.s.z.)	200kg	100kg	Na
	All other non-hazardous	5,000kg or 10,000m ³	2,000kg or 4,000m ³	100kg
	LPG	3,000kg	1,500kg	100kg
	LPG (within 50m of m.s.z.)	1,000kg	500kg	Na
	3.1A, 3.1B	6,000kg	2,000kg	100kg
Flammable 3 (Liquids)	3.1A, 3.1B (within 50m of m.s.z.)	2,000kg	600kg	Na
	3.1C	20,000kg	6,000kg	300kg
	3.1D	60,000kg	20,000kg	1,000kg
	3.2 (all)	3,000kg	1,000kg	50kg
Flammable 4 (Solids)	4.1 (all)	3,000kg	1,000kg	50kg
	4.2 (all)	1,000kg	400kg	20kg
	4.3 (all)	1,000kg	400kg	20kg
	5.1.2 Gases	1,000m ³	400m ³	40m ³
Oxidising Capacity 5	5.1.1 (all)	3,000kg	1,500kg	50kg
	5.2 (all)	1,000	500kg	20kg
	6.1A	500kg	200kg	0
	6.1 Gases	300m ³	100m ³	0
Toxic 6	6.1A (within 50m of m.s.z.)	200kg	100kg	0
	6.1B, 6.3-6.9	6,000kg	2,000kg	50kg
	6.1B, 6.3-6.9 (within 50m of m.s.z.)	2,000kg	1,000kg	Na
	6.1C	20,000kg	6,000kg	300kg
	6.1C (within 50m of m.s.z.)	6,000kg	2,000kg	0kg



Hazardous substance Property and Class	HSNO Subclass	Industrial Zone	Rural Zone Commercial Zone Maori Purpose Zone	Residential Zone Estuary Estates Zone
Corrosive 8	8.1, 8.2A, 8.3	6,000kg	2,000kg	50kg
	8.2B, 8.2C	20,000kg	10,000kg	300kg
Eco-toxic 9	9.1A, 9.2A, 9.3A, 9.4A	500kg	500kg	500kg
	(within 30m of water body or coastal water)	100kg	100kg	100kg
	9.1B, 9.2B, 9.3B, 9.4B	10,000kg	10,000kg	10,000kg
	(within 30m of water body or coastal water)	3,000kg	3,000kg	3,000kg
	9.1C, 9.2C, 9.3C, 9.4C	30,000kg	30,000kg	30,000kg
High BOD5 (>10,000 mg/l)	(within 30m of water body or coastal water)	10,000kg	10,000kg	10,000kg
	(within 30m of water body or coastal water)	100,000kg	40,000kg	20,000kg
		40,000kg	20,000kg	20,000kg

Explanation of Table 1:-

All – means all categories as defined in the Hazardous Substances (Classification) Regulations 2001. (Categories are identified alphabetically for particular classes of hazardous substance. For example, class 1 explosives are divided into categories A-H, J, K, L, N and S).

BOD5 – the biochemical oxygen demand (measured over a 5 day period), which is the amount of dissolved oxygen in a body of water required for the breakdown of organic matter in the water.

Class 1.2 and 1.3 substances are to be treated as class 1.1 substances if they are stored with class 1.1 substances.

HSNO subclass – has its meaning in the Hazardous Substances (Classification) Regulations 2001.

m.s.z. – means more sensitive zone in the following order of sensitivity:

- Industrial Zones,
- Rural Zone, Commercial Zone, Maori Purpose Zones
- Residential Zone, Estuary Estates Zone

NA means 'not applicable'

The quantity thresholds defining the consent status in the table above are to be applied to the aggregate of all substances proposed to be used or stored in one facility within one hazard grouping. The measure is in kilograms (kg) apart from Class 2.1, 5.1 and 6.1 permanent or compressed gases which are in m³ at Standard Temperature Pressure.

Standard Temperature Pressure is standard temperature/pressure which refers to ambient conditions, i.e. 101.3kPa and 20°C

Table 2: Conditions for all Permitted Activities

The following conditions apply to all Activities Permitted under this Appendix, provided that pipelines need only comply with item 5.11 below.

Item	Condition
5.1 Site design	Any part of a site that is involved in the manufacture, mixing, packaging, storage, loading, transfer, usage or handling of hazardous substances is designed, constructed and operated in a manner that prevents: (a) the occurrence of any off-site adverse effects from the activity on people, ecosystems, physical structures and other parts of the environment, and (b) the contamination of air, land or water (including groundwater, potable water supplies and surface waters) in the event of a spill or other type of release of hazardous substances.
5.2 Site layout	The separation between on-site facilities and the property boundary is adequate to protect neighbouring facilities, land uses and sensitive environments.
5.3 Storage	The storage of any hazardous substances is managed to prevent: (a) the unintentional release of the hazardous substance, and (b) the accumulation of any liquid or solid spills or fugitive vapours and gases in enclosed areas, that might have adverse effects on people, ecosystems or built structures.
5.4 Drainage systems	Site drainage systems are designed, constructed and operated in a manner that prevents the entry or discharge of hazardous substances into the stormwater or wastewater systems unless permitted by a network utility operator. Compliance can be achieved using precautionary methods, including clearly identified stormwater grates and access holes, roofing, sloped pavements, interceptor drains, containment and diversion valves, oil-water separators, sumps and similar systems.
5.5 Spill containment	Any parts of the site where a hazardous substance spill may occur must be serviced by a suitable spill containment system that is: (a) constructed from impervious materials resistant to the hazardous substances used, stored, manufactured, mixed, packaged, loaded, unloaded or otherwise handled on the site, and for liquid hazardous substances (i) able to contain the maximum volume of the largest tank present plus an allowance for stormwater or fire water, and (ii) for drums or other smaller containers, able to contain half of the maximum volume of substances stored, plus an allowance for stormwater or fire water, and (b) able to prevent any spill or other unintentional release of hazardous substances, and any stormwater or fire water that has become contaminated, from entering the stormwater drainage system, unless permitted by a network utility, and (c) able to prevent any spill or other unintentional release of hazardous substances, and any stormwater or fire water that has become contaminated, from discharging into or onto land or water (including drainage systems, groundwater and potable water supplies) unless permitted by a resource consent. Suitable means of compliance include graded floors and surfaces, bunding, roofing, sumps, fire-water catchments, overflow protection and alarms, and similar systems.
5.6 Stormwater	All stormwater grates on the site are clearly labelled "Stormwater Only"
5.7 Wash down areas	Any part of the site where vehicles, equipment or containers that are, or may be, contaminated with hazardous substances are washed must be designed, constructed and managed to prevent any contaminated wash water from: (a) entry or discharge into the stormwater drainage or the wastewater system unless permitted by a network utility operator, and (b) discharge into or onto land or water (including groundwater and potable water supplies) unless permitted by resource consent. Suitable means of compliance include roofing, sloped pavements, interceptor drains, containment and diversion valves, oil-water separators and sumps.

Item	Condition
5.8 Petroleum Storage tanks	Tanks for petroleum product storage must be designed, constructed and managed to prevent leakage and spills, and adverse effects on people, ecosystems and property. Storage tanks are: (a) constructed from impervious materials resistant to the hazardous substances to be stored, and (b) serviced by a leak detection or monitoring system that is capable of detecting a failure or breach in the structural integrity in the primary containment vessel.
5.9 Waste management	Waste containing hazardous substances is stored in a manner that prevents: (a) exposure to ignition sources, and the corrosion or other alteration of the containers used for the storage of the waste, and (a) the unintentional release of the waste Wastes are to be disposed of to authorised facilities.
5.10 Records	Records are kept of all types and quantities of hazardous substances and wastes produced or stored on the site. Records note method of waste disposal.
5.11 Pipelines	Any pipeline is designed, constructed and operated in a manner that avoids the occurrence of any off-site adverse effects from the activity on people, ecosystems, physical structures and other parts of the environment. Any pipeline is managed to avoid the unintentional release of the hazardous substances and the accumulation of any liquid or solid spills or fugitive vapours or gases in enclosed areas, that might have adverse effects on people, ecosystems, built structures.