

February 2020

POLICY CLARIFICATION

Existing LPG installations

This policy clarification sets out WorkSafe New Zealand's enforcement approach for existing LPG installations¹, while amendments to the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations) are being progressed.

You should read this in conjunction with proposals 22, 23, and 24 of the Ministry of Business, Innovation and Employment's (MBIE) consultation document (the proposals).

You should read this policy clarification if you're a:

- person conducting a business or undertaking (PCBU) with management or control of an existing LPG installation where LPG is present in quantities that require a Location Compliance Certificate (LCC).
- PCBU supplying LPG to existing LPG installations (supplier).
- compliance certifier engaged by a PCBU to certify an existing LPG installation.
- WorkSafe inspector.

Why is this policy clarification needed?

Some existing LPG installations are currently unable to be issued LCCs due to the transitional arrangements and separation distances in the Regulations having unintended compliance issues. MBIE is working to address this by making minor and technical amendments to the Regulations. WorkSafe is supporting this work.

You can find out more about this in the [consultation document](#)

This policy clarification sets out our enforcement approach to existing LPG installations, and suppliers of LPG, while these amendments to the Regulations are being progressed.

What does the law currently say?

Under regulation 10.34 PCBUs with management or control of a hazardous substance location, where LPG is present in quantities at or above the relevant threshold, must obtain an LCC. To obtain an LCC all requirements of regulation 10.34 must be met, including the requirement to separate the LPG from protected and public places.

Under regulation 11.41 suppliers must not deliver LPG to hazardous substance locations that don't have an LCC.

What difference will the proposed amendments make?

If passed, the proposed amendments will mean that an LCC can be issued to some existing LPG installations that can't meet current requirements for the separation of LPG from protected and public places.

¹ For the purposes of this policy clarification 'existing LPG installation' means:

- LPG cylinders and above ground tanks installed prior to 1 April 2004 that were constructed with an intervening screen wall, and/or
- LPG above ground tanks that were commissioned prior to 2 September 2010 with or without an intervening screen wall.

What does this mean for you?

Irrespective of the proposed amendments, you still need to meet all of your obligations under the Regulations. The only change is how WorkSafe will make decisions if we become aware that you're not complying.

PCBUs with management or control of an existing LPG installation, where LPG is present in quantities that require an LCC, must engage a compliance certifier to obtain an LCC.

Compliance certifiers authorised for locations holding LPG must continue to assess sites against the requirements of regulation 10.34. An LCC can only be issued if the site is compliant with all the prescribed requirements. Compliance certifiers may consider issuing conditional LCCs, provided one has not been issued to the site previously.²

If the site is not compliant and the compliance certifier refuses to issue an LCC, they must notify the PCBU and WorkSafe under regulation 6.23(2).

Suppliers must check that the sites they deliver to hold an LCC.

How we'll make our decisions

We target our enforcement activities to prevent the most serious risk of harm.

When we become aware that:

- a PCBU with management or control of an existing LPG installation doesn't have an LCC, or
- a PCBU is supplying LPG to an existing LPG installation that doesn't have an LCC

we'll consider the:

- type and extent of the non-compliance that prevented the LCC from being issued, and
- risk gap³ arising from the non-compliance.

Some existing LPG installations meet all requirements to obtain an LCC except for those relating to the proposals in the consultation document. If this is the only reason the existing LPG installation cannot obtain an LCC, we'll take that, and the intended effects of MBIE's proposed amendments, into account when deciding what we'll do.

This means that, while the regulatory amendments are being progressed, we're unlikely to prioritise enforcement action against either the existing LPG installation or the PCBU supplying LPG to those existing LPG installations. If we do decide to take action, our response will reflect the risk gap.

This approach doesn't apply if the existing LPG installation doesn't hold an LCC for any other reason. In these situations the risk gap will be proportionately greater, and our enforcement approach will reflect that.

In all situations where we choose to take enforcement action, we'll do so in line with our [Enforcement Regulatory Function Policy](#)

This approach will apply until a decision is made on the proposed amendments.

If you have questions about what this means for you, contact us at: HSapplications@worksafe.govt.nz

² Refer to Guidance for compliance certifiers when assessing existing LPG installations for Location Compliance Certification – October 2019.

³ The 'risk gap' is determined by comparing the duty holder's breach of the legislation against where they should be if they were taking reasonably practicable steps to be compliant.