

Exemption from provisions of Health and Safety at Work (Hazardous Substances) Regulations 2017

In accordance with section 220 of the Health and Safety at Work Act 2015 (the Act), I, Tony Hetherington, Head of High Hazards, Energy and Public Safety at WorkSafe New Zealand, exempt Wakefield Auto Services Limited and Rockgas Limited from compliance with regulation(s) 11.21 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 for the above ground LPG tank at Wakefield Auto Services Limited, 67 Whitby Road, Wakefield.

I do so –

- being satisfied that:
 - a. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to it; and
 - b. the exemption is not inconsistent with the purpose of the Act; and
 - c. the installation of a vapour barrier will mitigate the risk of the reduced separation from a public place.
- subject to the conditions listed in Appendix 1.

This exemption takes effect on **15 May 2019** and expires on **15 May 2024** unless it is replaced sooner or revoked.

Signed at Wellington this 10 day of May 2019



Tony Hetherington
Head of High Hazards, Energy and Public Safety
WorkSafe New Zealand

Appendix 1

Exemption Conditions

The application to grant an exemption has been decided as follows:

The exemption is granted to Wakefield Auto Services Limited and Rockgas Limited by WorkSafe in accordance with section 220 of the Health and Safety at Work Act 2015 to accept the 7500 litre above ground LPG tank (#121008) being too close to a public place. The site plan prepared by Contact Energy Limited titled Separation Areas, drawing number WA-CZ-01, revision 1, dated 15 August 2018 forms part of this decision.

The exemption comes into effect 15 May 2019 and expires on 15 May 2024 unless it is replaced sooner or revoked. The exemption is subject to the following conditions:

1. The Parties must construct and maintain an intervening wall between the above ground LPG tank (#121008) and the council walkway on Lot 3 DP 16542 so that
 - a. the wall is constructed of fire resistant materials; and
 - b. the wall is vapour tight; and
 - c. the wall is more than the greater of 1.8 metres high or 0.6 metres above the top surface of the tank; and
 - d. the minimum distance measured in the horizontal plane around each end of the wall by the most direct line from the tank to the council walkway on Lot 3 DP 16542 must be no less than 5.9 metres.
 - e. the wall is installed no later than 6 months from the date of this exemption taking effect.
2. The Parties must update the site plan prepared by Contact Energy Limited titled Separation Areas, drawing number WA-CZ-01, revision 1, dated 15 August 2018 to include the intervening wall described above no later than 6 months from the date of this exemption taking effect.
3. The Parties must maintain the layout of the site as shown in site plan prepared by Contact Energy Limited titled Separation Areas, drawing number WA-CZ-01, revision 1, dated 15 August 2018 (once updated as per above).
4. The Parties must ensure the area around the above ground LPG tank (#121008) is kept free of vegetation and any other obstacles that may hinder emergency services to access all tank fittings and to apply firefighting water to all surfaces of the tank.
5. The Parties must provide a copy of this exemption to any compliance certifier engaged to issue a location compliance certificate for the above ground tank (#121008) at 67 Whitby Road, Wakefield.
6. A copy of this exemption document must be held on-site and must be available to authorised persons.

Appendix 2 – Legislative Provisions

Exemption provisions in the Health and Safety at Work Act 2015

Under section 220 of the *Health and Safety at Work Act 2015* (HSWA), WorkSafe may exempt any person or class of persons from compliance with any provision or provisions of regulations. WorkSafe must not grant an exemption unless it is satisfied that:

- a. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the proposed exemption, and
- b. the exemption is not inconsistent with the purpose of HSWA.

In consideration of (a) WorkSafe considers if what the application covers is broader than necessary to address the matter(s) in the proposed exemption.

One of the purposes of HSWA is to protect workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant (s3 of HSWA). Risks to health and safety must be eliminated, so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable (s30 of HSWA). A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers and that the public is not put at risk by its work (s36 of HSWA).

In consideration of (b) we have assessed each element of the application to see if there is a reasonably practicable means of complying with the applicable Regulations. Reasonably practicable means that which is reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters.

Exemption provisions in regulation 11.40 of the HS Regulations

Regulation 11.40 prescribes that when considering whether to grant an exemption from the applicable regulations 11.4 to 11.37 of the HS Regulations, WorkSafe must have regard to:

- a. the quantity and location of the relevant hazardous substance, and any other hazardous substance located at that place; and
- b. the capacity of any fire-fighting facilities at that place; and
- c. the fire-resistance rating of any structure (for example, walls, floors, ceilings, and doors) that contains the hazardous substance; and
- d. for a hazardous substance in an above ground stationary tank, whether the design and construction of the tank will protect the tank from fire.

Provisions in applicable HS Regulations

The HS Regulations specify the following requirements for tanks and filling stations for LPG

- a. separation distances to protected places and public places from LPG tanks (Table 4 Schedule 12).
- b. separation distances to protected places and public places from filling stations (Regulation 11.22).

- c. provisions for previously approved LPG installations in relation to intervening walls (clause 11, Schedule 1)
- d. a protected place is defined as including dwellings, schools, buildings etc. where persons are accustomed to assemble in large numbers and factories, offices warehouses etc. where persons are regularly employed, whether inside or outside the property boundary (Regulation 3).
- e. a public place is defined as a place other than private property or a protected place that is open to and frequented by the public and includes a public road (Regulation 3).
- f. separation distances are not to extend beyond the boundary of the property on which the flammable liquids or gases are located without agreement in writing from the neighbour (Regulation 9).

Sites holding LPG that do not meet the applicable requirements of Parts 10 and 11 of the HS Regulations cannot be issued a location compliance certificate.

An exemption granted to a site will enable a location compliance certificate to be issued, subject to the other matters for certification being compliant.