

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

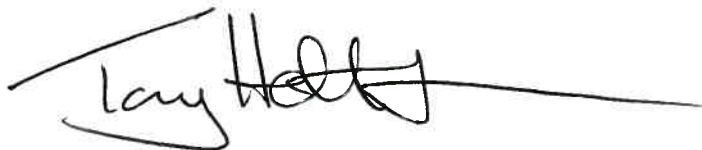
In accordance with section 220 of the Health and Safety at Work Act 2015 (the Act), I, Tony Hetherington, Head of High Hazards, Energy and Public Safety at WorkSafe New Zealand, exempt Rockgas Limited and JJP Holdings Limited from compliance with regulation 11.21 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 for the above ground LPG tank and remote fill point at Caltex Basin Reserve, 28 Adelaide Road, Mount Cook, Wellington.

I do so –

- because:
 - 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 risks to the health and safety of workers and others can be managed by the use of fire resistance rated walls.
- subject to the conditions listed in Appendix 1.

This exemption takes effect on **11 July 2019** and expires on **11 July 2024** unless it is replaced sooner or revoked.

Signed at Wellington this 8th day of July 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 by WorkSafe New Zealand in accordance with section 220 of the Health and Safety at Work Act 2015 to Rockgas Limited and JJP Holdings Limited (the Parties) to accept reduced separation distances to protected places from the above ground LPG tank (#114412) and associated remote fill point at Caltex Basin Reserve, 28 Adelaide Road, Mount Cook, Wellington.

The site plan prepared by BD Group Design Ltd, Hazardous Substance Location & Controlled Zone as Built Site Plan, drawing number N40871-ABE06, rev C, dated 11/2005 forms part of this decision.

The exemption comes into effect 11 July 2019 and expires on 11 July 2024 unless it is replaced sooner or revoked. The exemption is subject to the following conditions:

1. The Parties must ensure the above ground tank and remote fill point are separated from any part of a protected place that is closer than 13.9 metres (the area being protected) in a direct line in accordance with both condition 2 and condition 6.
2. The Parties must ensure there is an intervening wall in line of sight of the area being protected that is EITHER-
 - (a) an existing wall; OR
 - (b) a newly constructed wall; OR
 - (c) a combination of (a) and (b).
3. For the purposes of condition 2(a) an existing wall must have a minimum fire-resistance rating of 180/180/180 minutes and there must be an agreement in place with any neighbour whose wall may be used for the purpose of compliance with condition 2(a) covering-
 - (a) agreement that the wall may be used as an intervening wall; and
 - (b) how the Parties and the neighbour will work together to ensure the wall is maintained as an intervening wall; and
 - (c) acknowledgement by the neighbour of the risks associated with the wall being utilised for the purposes of fire protection; and
 - (d) the maintenance of the agreement that includes an annual review.
4. Notwithstanding 3, any opening in an existing wall that is below 0.6 metres above the top surface of the tank within the area being protected must be sealed to a minimum fire-resistance rating of 120/120/120 minutes.
5. For purposes of condition 2(b) a newly constructed wall must-
 - (a) have a minimum fire-resistance rating of 240/240/240 minutes; and
 - (b) be 0.6 m or higher above the top surface of the tank.
6. The Parties must ensure there is an intervening wall or intervening walls (vapour barrier) where the distance around any end of the wall by the most direct line must be at least 13.9 metres from the tank and remote fill point to a protected place. The wall must be EITHER-
 - (a) an existing wall or existing walls; OR
 - (b) a new constructed wall; OR
 - (c) a combination of (a) and (b).
7. For the purposes of condition 6(a) an existing wall must-
 - (a) be fire resistant; and

- (b) vapour tight below 0.6 metres above the top surface of the tank; and
 - (c) there is an agreement in place covering the requirements of condition 3(a) to 3(d)
8. For the purpose of condition 6(b) a newly constructed wall must-
- (a) be constructed of fire-resistant materials; and
 - (b) be vapour-tight; and
 - (c) be 0.6 metres or higher above the top surface of the tank.
9. For the purposes of the agreements required under condition 3 and condition 7(c), the agreement may be the same agreement.
10. For the purposes of conditions 2(b) and 6(b) the new wall may be the same wall.
11. The Parties must ensure the sprinkler system for the above ground LPG tank is maintained and tested annually.
12. The Parties must ensure the site Emergency Response Plan for Caltex Basin Reserve includes a response to a fire at either 42-48 Adelaide Road or 3 Myrtle Crescent. This must include the operation of sprinkler system for the above ground LPG tank.
13. The Parties must update the site plan prepared by BD Group Design Ltd, Hazardous Substance Location & Controlled Zone as Built Site Plan, drawing number N40871-ABE06, rev C, dated 11/2005 to include-
- (a) any new walls constructed in accordance with conditions 2(b) and 6(b); and
 - (b) separation distances from public and protected places as prescribed in the Health and Safety at Work (Hazardous Substances) Regulation 2017.
14. The Parties must maintain the layout of the site as shown in the site plan once updated in accordance with condition 13.
15. The Parties must provide a copy of this exemption to any compliance certifier engaged to issue a location compliance certificate for the above ground LPG tank.
16. A copy of this exemption must be held at the site.
17. The parties must comply within the following timeline from the date this exemption takes effect-
- (a) where there is the requirement to obtain written agreement under condition 3, condition 7 or both, within 3 months.
 - (b) where condition 4 applies, any opening in an existing wall must be sealed within 6 months.
 - (c) where a new wall is constructed in accordance with the requirements of condition 5, condition 8, or both, within 9 months.
 - (d) for the requirements to update the emergency response plan in accordance with condition 12, within 3 months.
 - (e) for the requirement to update the site plan in accordance with condition 13, within 9 months.

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. provisions for previously approved LPG installations in relation to intervening walls (clause 11, Schedule 1)
- c. 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