

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14 of the First
Schedule to the Act

BETWEEN HORTICULTURE NEW ZEALAND
(ENV-2007-CHC-000291)

AND FEDERATED FARMERS OF NEW
ZEALAND INC

(ENV-2007-CHC-000293)

Appellants

AND CANTERBURY REGIONAL COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge CJ Thompson sitting alone pursuant to section 279 of the Act.

IN CHAMBERS

CONSENT ORDER

Introduction

[1] The Court has read and considered the appeals and the memorandum of the parties received 9 October 2008.

[2] The following persons gave notice of an intention to become parties under s274:

- Transit New Zealand
- Tegel Foods Ltd
- Canterbury Meat Packers Ltd

however none of them have an interest in the subject matter of this consent order.

[3] The Court is making this order under section 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for the present purposes that:

All parties to the proceedings have executed the memorandum requesting this order; and



- (b) All parties 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 Act, including in particular Part 2.

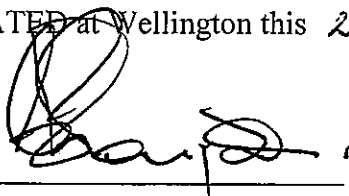
Order

[4] The Court orders, by consent, that Chapter 3 of the proposed Canterbury Natural Resources Regional Plan is amended as set out in Appendix One to this order.

[5] The appeals (as they relate to Christchurch Outdoor Burning) are otherwise dismissed.

[6] There is no order as to costs.

DATED at Wellington this *21st* day of April 2009



C J Thompson
Environment Judge



Appendix One: Changes to Chapter 3 of the Proposed Canterbury Natural Resources Regional Plan

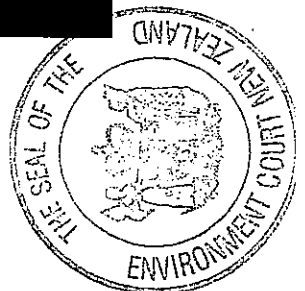
1. Policy AQL21

Amend Policy AQL21 as follows:

Policy AQL21: Restrict discharges to air from outdoor burning in the Christchurch Clean Air Zones 1 and 2

In the Christchurch Clean Air Zones 1 and 2:

- (a) allow the discharge to air of contaminants associated with any outdoor burning where such discharges:
- (i) occur between September and April inclusive and occur in accordance with Policy AQL4; or
 - (ii) within the Christchurch Clean Air Zone 2:
 - (1) results from the outdoor burning of diseased vegetation from primary production on production land which is necessary to be burned for quarantine or disease control purposes; and
 - (2) the outdoor burning is undertaken so as not to contribute to ambient PM₁₀ concentrations within the Christchurch Clean Air Zone 1; and
- (b) restrict the discharge to air of contaminants associated with any outdoor burning where such discharges occur between May and August inclusive, except where such discharges occur from the burning of vegetative material in the following circumstances, assessed on a case-by-case basis by Environment Canterbury:
- (i) where it is impracticable to remove vegetative material because of unsuitable access, and such vegetative material will result in a fire risk if not removed or will damage structures if not removed; or
 - (ii) where the financial implications of the alternatives to burning vegetative material are significant; or
 - (iii) when summer fire risk restrictions prevent burning vegetative material during March and April; and



(iv) where the outdoor burning can be undertaken so as not to contribute to the ambient PM₁₀ concentrations in Christchurch Clean Air Zone 1

2. Table 3.1 Summary of Rules

Amend **Table 3.1 Summary of Rules** by adding the following between Rule AQL35 and Rule AQL36:

<i>Christchurch Clean Air Zone 2</i>	<i>AQL35A</i>	<i>Outdoor burning of diseased vegetation from production land in winter</i>	<i>Permitted</i>
	<i>AQL35B</i>	<i>Outdoor burning of prunings from production trees and shelterbelts on production land</i>	<i>Restricted discretionary</i>

3. Rule AQL35

Amend **Rule AQL35** as follows:

Rule AQL35 Outdoor burning in winter in the Christchurch Clean Air Zones 1 and 2 – non-complying activity

Activity	Cross Ref.
<p>Subject to Rules AQL36 and AQL37, the discharge of contaminants into air in the Christchurch Clean Air Zones 1 and 2 from outdoor burning during the months of May, June, July and August,</p> <p>(a) <u>which is not classified as a permitted activity by Rule AQL35A; or a restricted discretionary activity in accordance with Rule AQL35B; or</u></p> <p>(b) <u>does not comply with the conditions of Rule AQL35A or the standards and terms of Rule AQL35B;</u></p> <p>is a non-complying activity.</p>	

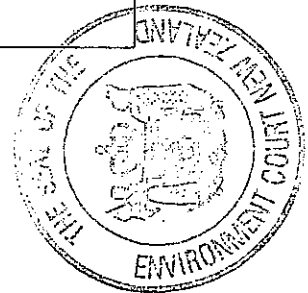


4. New Rule AQL35A

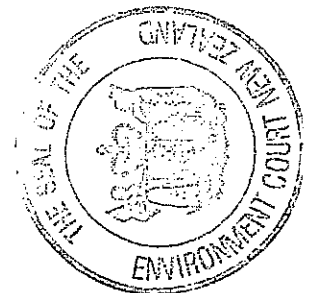
Add new Rule AQL35A as follows:

Rule AQL35A Outdoor burning of diseased vegetation from production land in winter in the Christchurch Clean Air Zone 2 – permitted activity

Activity	Conditions	Cross Ref.
<p>Notwithstanding Rule AQL35, and subject to Rules AQL36 and AQL37, during the months of May, June, July and August the discharge of contaminants into air in the Christchurch Clean Air Zone 2 from outdoor burning of diseased vegetation on production land which is zoned rural in the Christchurch City Plan, is a permitted activity.</p>	<ol style="list-style-type: none"> 1. <u>Burning shall only be undertaken when the diseased material originates from production land as a result of the production of primary products, including prunings from production trees.</u> 2. <u>Burning shall only be undertaken when required for quarantine or disease control purposes</u> 3. <u>Burning shall only occur of diseased vegetation sourced from no more than 2 adjoining properties where that vegetation has been derived or used, and burning shall be undertaken on one of those properties.</u> 4. <u>The amount of material to be burnt on one property at any one time shall have a footprint not greater than 4 metres by 4 metres and shall not be piled higher than 2 metres from ground level.</u> 5. <u>The discharge shall not occur from the combustion of material with a moisture content of more than 25% dry weight, or if the moisture content cannot be determined the material shall have been left to dry for at least six weeks prior to burning and within the two days prior to burning there shall have been less than 5 mm of rainfall.</u> 6. <u>The discharge shall not occur outside the hours of 8 am to 2 pm.</u> 7. <u>The discharge shall not occur when the wind causes particles such as smoke to move towards Christchurch Clean Air Zone 1.</u> 8. <u>The discharge shall only occur if the wind speed is not less than 5 metres per second, measured at 1 metre above ground level.</u> 9. <u>The discharge shall not occur within 100 metres upwind, or 50 metres in any other direction, from any sensitive activity that is not located on the property where burning occurs.</u> 	



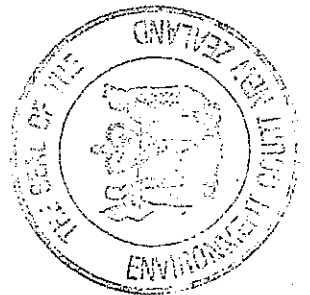
	<p>10. <u>The dispersal or deposition of particles shall not cause an objectionable or offensive effect beyond the boundary of the property where the discharge originates.</u></p> <p>11. <u>The burn shall be supervised at all times.</u></p> <p>12. <u>Equipment shall be present in order that the fire can be extinguished within a maximum time of 30 minutes by the person supervising the burn.</u></p> <p>13. <u>A wind speed monitor shall be present which is capable of recording the wind speed at the site of the burn.</u></p> <p>14. <u>Environment Canterbury shall be given notice of the burn a minimum of 2 hours in advance of the burn. Notification must either be provided in writing or by contacting the Environment Canterbury pollution hotline on 0800 765 588 or any future equivalent.</u></p> <p>15. <u>Written records of burning shall be kept. The records shall include:</u></p> <ul style="list-style-type: none"> (a) <u>Condition of the material burned</u> (b) <u>Size of the burn</u> (c) <u>Time of day of the burn</u> (d) <u>Duration of the burn</u> (e) <u>Wind speed and direction during the burn</u> (f) <u>Equipment present to extinguish the burn</u> (g) <u>Supervisor present</u> <p><u>The written records shall be provided to Environment Canterbury within 24 hours of being requested.</u></p>		
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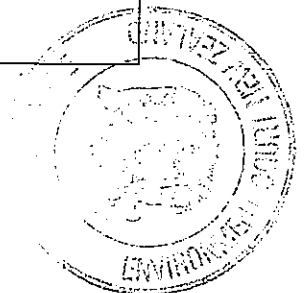
5. Rule AQL35B

Add new Rule AQL35B as follows:

Rule AQL35B Outdoor burning of prunings from production trees and shelterbelts on production land in the Christchurch Clean Air Zone 2 in winter – restricted discretionary activity



Activity	Standards/Terms	Restriction of Discretion	Cross Ref.
<p><u>Notwithstanding Rules AQL35, except for Rule AQL35A, and subject to Rules AQL36 and AQL37, during the months of May, June, July and August, the discharge of contaminants into air in the Christchurch Clean Air Zone 2, from outdoor burning of prunings from production trees and shelter belts on production land zoned rural in the Christchurch City Plan is a restricted discretionary activity.</u></p>	<p>1. <u>Burning shall only be undertaken when the prunings from production trees and shelter belts originates from production land as a result of the production of primary products.</u></p> <p>2. <u>Burning shall only occur of prunings from production trees and shelter belts sourced from no more than 2 adjoining properties where that vegetation has been derived or used, and burning shall be undertaken on one of those properties.</u></p> <p>3. <u>The discharge shall not occur within 100 metres upwind, or 50 metres in any other direction, from any sensitive activity that is not located on the property where burning occurs.</u></p>	<p><u>Environment Canterbury's discretion is restricted to the following matters:</u></p> <ol style="list-style-type: none"> 1. <u>Ambient air quality effects from the discharge of contaminants to air</u> 2. <u>Localised adverse effects from the discharge of contaminants to air</u> 3. <u>Method of, time of, size of and frequency of burning</u> 4. <u>Vegetation type and condition</u> 5. <u>Weather conditions under which burning may occur.</u> 6. <u>Practicality of removing the vegetation from the site</u> 7. <u>Implications of the vegetation remaining on site until outside of the months of May, June, July and August</u> 8. <u>Alternatives available to avoid or reduce the outdoor burning, including the financial implications of those alternatives.</u> 9. <u>Fire management controls and practices, including supervision and equipment shall be present in order that the fire can be extinguished within a maximum time of 30 minutes by any person supervising the burn.</u> 10. <u>Carrying out of measurements, samples, analyses, surveys, investigations, or inspection, including:</u> <ol style="list-style-type: none"> (a) <u>Recording weather conditions</u> (b) <u>Recording the management of the burn, including how the burn is conducted</u> 11. <u>Provision of information to the consent authority at specified times.</u> 12. <u>Consent duration</u> 13. <u>Review of conditions of consent and the timing and purpose of the review</u> <p>Notification</p> <p><u>In accordance with section 94D(2), an application for resource consent required by this rule does not need to be notified, and in accordance with section 94D(3), notice of such an application does not need to be served.</u></p>	



6. Explanation to Rule AQL35

Amend 3.5.9.3 Regional rules for discharges to air for outdoor burning as follows:

Rule AQL35 Outdoor burning in winter in the Christchurch Clean Air Zones 1 and 2 – non-complying activity

Outdoor burning in fuel burning devices, except for food cooking, has been controlled in metropolitan areas of Christchurch since September 1988 when Christchurch City Council Bylaw 119A restricted burning in the outdoors except in the months of March, April, September and October.

Outdoor burning during winter months has the potential to significantly elevate levels of PM₁₀ in Christchurch. Other than the situations provided for by Rules AQL35A and AQL35B, burning should therefore be prevented during this period, unless it can be justified by the exceptional circumstances of a specific case. The effects of burning in such a case would be assessed via a resource consent application, having regard to the alternative disposal options available. Matters contained in Policy AQL21(b) will be taken into account.

7. Explanation to Rule AQL35A

Amend 3.5.9.3 Regional rules for discharges to air for outdoor burning by adding the following between Rule AQL35 Outdoor burning in winter in the Christchurch Clean Air Zones 1 and 2 – non-complying activity and Rule AQL36 Outdoor burning of unspecified waste – prohibited activity for which no resource consent shall be granted:

Rule AQL35A Outdoor burning of diseased vegetation from production land in the Christchurch Clean Air Zone 2 in winter – permitted activity

Occasionally, during the winter months, horticultural and agricultural activities require some types of diseased vegetative matter arising from primary production activities to be disposed of by burning in order to control disease. In these situations, when the storage of the diseased material (until after winter) poses a threat to production processes and there is no viable alternative disposal technique, it is recognised that some provision should be made for burning to occur. However, this should only be permitted under very tightly controlled conditions which prevent PM₁₀ emissions from contributing to ambient PM₁₀ concentrations in the Christchurch Clean Air Zone 1.

This permitted activity rule is intended to capture only primary production activities occurring on production land which is zoned for that purpose in the Christchurch City Plan. Under these circumstances enabling burning during the winter months furthers the communities well being. As such, the material permitted to be burned is limited to 'diseased vegetation' which must be burned to control the disease. The material to be burned must be from that property, or the 2 adjoining properties, which must be production land, zoned Rural in the Christchurch City Plan and within Christchurch Clean Air Zone 2. Currently the rural zones within the Christchurch City Plan are Rural1-7, Rural Hills and Rural Quarry.

The conditions set out within Rule AQL35A seek to prevent emissions from contributing to ambient PM₁₀ concentrations in the Christchurch Clean Air Zone 1, by (i) minimising the amount of material burnt at any one time on one property; (ii) ensuring that the material burned is not 'wet'; and (iii) ensuring that burning does not take place at times when inversion layers can develop and when ambient concentrations of PM₁₀ are at their highest. As such burning may only occur between 8am and 2pm, when the wind is blowing away from the Christchurch Clean Air Zone 1 and when wind



speeds are greater than 5 metres per second. For ease of interpretation, a wind speed of 5 metres per second is equivalent to 10 knots, 18 kilometres per hour, and approximates 4 on the Beaufort Scale, which is the 'speed at which dust and loose paper are raised and small branches begin to move'. However, a wind speed monitor must also be present at the burn, so that the fire can be extinguished if the wind speed drops below 5 metres per second.

Burning should be supervised at all times by a suitable person, capable of extinguishing the fire if the conditions for discharge (such as wind speed, wind direction, time of day) are not met. The necessary equipment must be available in order that, if required, this person can extinguish the fire within a maximum time of 30 minutes, so that there is no continued discharge to air.

Environment Canterbury must be informed of the intention to burn at least 2 hours before burning commences either in writing or by phoning Environment Canterbury's pollution hotline. Records must be kept of all burning, including the condition of the material (percentage moisture content or drying time), the volume of the material (footprint and height), dates and times of burn (including duration of discharge), persons present, wind speed and wind direction. These records shall be provided to Environment Canterbury on request.

8. Explanation to Rule AQL35B

Amend 3.5.9.3 Regional rules for discharges to air for outdoor burning by adding the following between new **Rule AQL35A Outdoor burning of diseased material from production land in the Christchurch Clean Air Zone 2 in winter** – permitted activity and **Rule AQL36 Outdoor burning of unspecified waste – prohibited activity** for which no resource consent shall be granted:

Rule AQL35B Outdoor burning of prunings from production trees and shelterbelts on production land in the Christchurch Clean Air Zone 2 in winter – restricted discretionary activity

Occasionally, during the winter months, horticultural and agricultural activities may need to dispose of prunings from production trees and shelterbelts through burning. Whilst this disposal may not be critical for disease control, as provided for under Rule AQL35A, it is recognised that in some situations, an inability to burn some vegetative waste may impact upon commercial operations, and therefore resulting in implications for the community's well being. Rule AQL35B recognises this, and provides for the application for resource consent as a restricted discretionary activity. Council's discretion includes consideration of the effects on ambient air quality and localised adverse effects.

