

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14 of the
First Schedule to the Act

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND INCORPORATED

(ENV-2007-CHC-293)

(Topics: ENV-2008-308-051

ENV-2008-308-052)

Appellant

AND

CANTERBURY REGIONAL
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

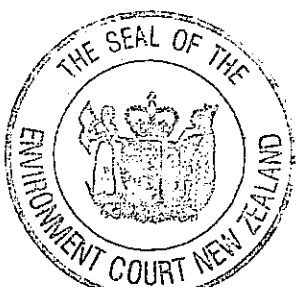
Environment Judge J E Borthwick sitting alone under section 279 of the Act

In Chambers at Christchurch

CONSENT ORDER

Introduction

- [1] The Court has read and considered the appeal, the respondent's reply, and the memorandum of the parties received on 24 March 2009. The topics

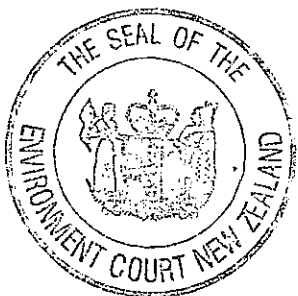


determined by this consent order relate to Large Scale Fuel Burning Devices.

- [2] Canterbury Meat Packers Limited and Horticulture New Zealand have given notice of an intention to become parties under s274 and have signed the memorandum setting out the relief sought in respect of the topics subject to this consent 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 to the proceedings have executed the memorandum requesting this order;
 - (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 Resource Management Act, including in particular Part 2.

Order

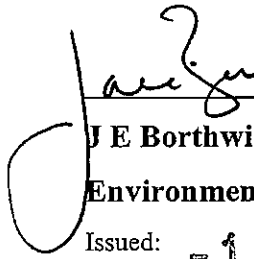
- [4] Therefore the Court orders, by consent, that the appeal is allowed to the extent that the Canterbury Regional Council is directed to modify Chapter 3 of the Proposed Canterbury Natural Resources Regional Plan as set out in **Appendix One** attached to and forming part of this consent order.
- [5] The appeal, in respect of topics ENV-2008-308-051 and ENV-2008-308-052, is otherwise dismissed.



[6] There is no order for costs.

DATED at CHRISTCHURCH

1st May April 2009.


J E Borthwick
Environment Judge

Issued: - 1 MAY 2009



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

1. Rule AQL12

- a. Amend **3.5.9.2 Regional rules for discharges to air from large scale fuel burning devices**, section **Rule AQL12 Fuels prohibited from use in large scale fuel burning devices anywhere in Canterbury - prohibited activity for which no resource consent shall be granted** by adding a new fourth paragraph as follows:

Rule AQL12 does not apply to the incineration of waste, including diseased plant and animal material. Discharges to air from waste incineration are controlled by Rules AQL63 to AQL69.

- b. Amend **3.5.9.6 Regional rules for discharges of contaminants into air from waste management processes**, section **Rule AQL69 Waste management processes not permitted in Rules AQL63 AQL67 - discretionary activity**, by amending the first sentence as follows:

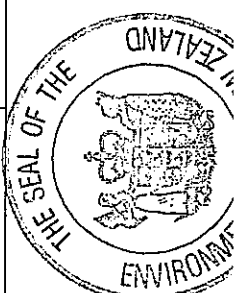
Rule AQL69 relates to all discharges to air from waste management processes (including the incineration of diseased plant and animal material) that do not comply with the conditions of the permitted activity rules AQL63 to AQL67 therefore making them a discretionary activity, requiring a resource consent.

2. Rule AQL 24

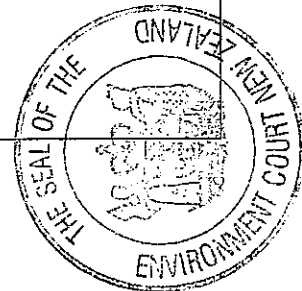
- a. Amend **Rule AQL24 External combustion of solid fuel or light fuel oil 1 MW or less outside of the Christchurch Clean Air Zones 1 and 2 - permitted activity** as follows:

Rule AQL24 External combustion of solid fuel or light fuel oil 1 MW or less outside of the Christchurch Clean Air Zones 1 and 2 – permitted activity

Article	Conditions	Cross Ref.
Except where prohibited by Rule AQL12, the discharge of contaminants into air from the burning, outside the Christchurch Clean Air	1. Where the discharge of sulphur dioxide is less than 0.5 kg/hr, the discharge into air shall occur via a chimney stack at the relevant minimum height specified in Schedule AQL5, and shall be at least 3 metres above the ridge line of the roof of any building, land or other substantial structure within a	



Activity	Conditions	Cross Ref.
<p>Zones 1 and 2, of coal, wood or light fuel oil in any external combustion equipment having a net combined heat output capacity within one property any management area of greater than 40 kilowatts and less than or equal to 1 megawatt, is a permitted activity.</p> <p><u>For the purpose of this rule a "management area" may contain one or more large scale fuel burning devices, and means:</u></p> <p>a) <u>the property if the property is less than or equal to 1 hectare; or</u></p> <p>b) <u>if the property is greater than 1 hectare, within an area on that property defined by a 100m radius centred on any individual large scale fuel burning device.</u></p>	<p>radius, from the stack, of 50 metres</p> <p>2. Where the discharge of sulphur dioxide exceeds 0.5 kg/hr, the discharge into air shall occur via a chimney stack, at the relevant minimum height specified in Schedule AQL5, and the ridge line of the roof of any building, land or other substantial structure within a radius, from the stack, of 50 metres shall not be higher than 0.4 times the stack height.</p> <p>3. The discharge shall be directed vertically into air and shall not be impeded by any obstruction above the stack which decreases the vertical efflux velocity, below that which would occur in the absence of such obstruction.</p> <p>4. The sulphur content of the fuel to be burned shall not exceed 2% by weight.</p> <p>5. Where the sulphur content of the fuel to be burned exceeds 0.75% by weight, the chimney stack shall be thermally insulated to prevent acid smut formation.</p> <p>6. The ash content of coal to be burned shall not exceed 7% by weight. Coal burned shall contain less than 30% by weight of fine particles having a diameter of less than 3 millimetres.</p> <p>7. The discharge and associated fuel handling shall not cause odour or particulate matter which causes offensive or objectionable effects beyond the boundary of the property where the discharge originates.</p> <p>8. The concentration of total suspended particulate in combustion gas discharged from all emission stacks, when measured according to the requirements described in Schedule AQL6, shall not exceed 500 milligrams per cubic metre of air adjusted to 0 Celsius, dry gas basis, 101.3 kilopascals and 8% oxygen or 12% carbon dioxide.</p> <p>9. The opacity of the discharge at the chimney exit shall not be darker than Ringelmann Shade No. 1, as described in New Zealand Standard 5201:1973, except:</p> <p>(a) in the case of a cold start for a period not exceeding 30 minutes in operation; and</p> <p>(b) for a period not exceeding a total of four minutes in each succeeding hour of operation.</p> <p>10. The moisture content of wood to be burned shall not exceed 25% dry weight.</p> <p>11. The fuel burning equipment shall be maintained at least once every year by a person competent in</p>	



Activity	Conditions	Cross Ref.
	<p>the maintenance of that equipment. This maintenance shall include: ash removal; adjustment if necessary of the fuel to air ratio and testing of the ratio of combustion gases (carbon monoxide, carbon dioxide and oxygen) discharged to ensure compliance with condition 9. A copy of each maintenance report shall be held and provided to Environment Canterbury before 31 March each year.</p> <p>12. All fuel burning equipment shall be operated in accordance with the manufacturer's instructions. Coal burning equipment shall also be operated in accordance with the Environmental Code of Practice for the Operation of Coal Fired Boiler Installations less than 5 megawatts (Gross) Capacity, Coal Research Ltd, December 1996, where applicable.</p> <p>13. A record shall be kept of the type and quantity of fuel used each month in the fuel burning equipment. This record shall be held and provided to Environment Canterbury before 31 March each year.</p>	

b. Amend 3.5.9.2 Regional rules for discharges to air from large scale fuel burning devices, section Rule AQL24 External combustion of solid fuel or light fuel oil 1 MW or less outside of the Christchurch Clean Air Zones 1 and 2 - permitted activity, by adding new the following text after the first paragraph:

The rule incorporates the "net combined heat output capacity" approach in order to ensure that a number of large scale fuel burning devices cannot discharge from a management area as a permitted activity in a manner which may result in cumulative adverse effects on the environment. The meaning of "management area" is defined within the rule. In summary, if a property (as defined in Chapter 1 of the Canterbury Natural Resources Regional Plan) is:

(a) less than or equal to 1 hectare in area, the management area is the same as the property. For the purposes of this rule, the cumulative net combined heat output capacity of all external combustion equipment within that entire property must be greater than 40 kilowatts and less than or equal to 1 megawatt.

(b) greater than 1 hectare in area, there may one or more management areas within that property. For the purposes of this rule, the net combined heat output capacity of all external combustion equipment within 100 metres of the external combustion equipment being considered must be greater than 40 kilowatts and less than or equal to 1 megawatt.



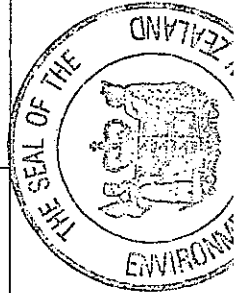
On properties in excess of 1 hectare, the number of management areas will equal the number of large scale fuel burning devices present. The net combined heat output capacity of all the combustion equipment in each management area will need to be determined. In some circumstances, one large scale fuel burning device will form part of more than one management area, and therefore will need to be considered more than once. If a large scale fuel burning device is located more than 100 metres away from any other large scale fuel burning device, then it will be the only external combustion equipment which needs to be considered within that management area. In the event that there is more than one management area on a property, any non-compliance within a single management area does not result in non compliance within other management areas of the same property.

3. Rule AQL26

- a. Amend **Rule AQL26** External combustion of diesel or kerosene greater than 2 MW to 5 MW or less, gas greater than 5 MW to 20 MW or less, internal combustion of diesel, petrol or gas greater than 300 kW, and external combustion of solid fuel or light fuel oil greater than 1 MW to 3 MW or less outside of the Christchurch Clean Air Zones 1 and 2 - controlled activity as follows:

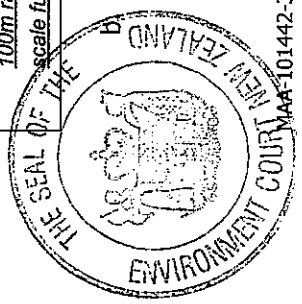
Rule AQL26 External combustion of diesel or kerosene greater than 2 MW to 5 MW or less, gas greater than 5 MW to 20 MW or less, internal combustion of diesel, petrol or gas greater than 300 kW, and external combustion of solid fuel or light fuel oil greater than 1 MW to 3 MW or less outside of the Christchurch Clean Air Zones 1 and 2 – controlled activity

A. Terms	Standards / Terms	Control	Cross Ref.
<p>Except where prohibited by Rule AQL12, the discharge of contaminants into air from the burning, outside the Christchurch Clean Air Zones 1 and 2, of:</p> <p>(a) diesel or kerosene, in any external combustion equipment having a net combined heat output capacity within one property any management area of greater than 2 megawatts and less than or equal to 5 megawatts; or</p> <p>(b) natural gas or liquefied petroleum gas, in any external combustion equipment having a net combined heat output</p>	<p>1. The discharge into air shall occur via a chimney stack at a height of at least 7 metres above ground level and at least 3 metres above the ridge line of the roof of any building, land or other substantial structure within a distance of five times the height of that building, land or structure.</p> <p>2. The discharge into air from internal combustion equipment shall occur via a chimney stack above the ridge line of the roof of any building, land or other substantial structure within a radius, from the stack, of 5 times the stack height.</p> <p>3. The discharge shall be directed vertically into air and shall not be impeded by any obstruction above the stack which decreases the vertical efflux velocity, below that which would occur in the absence of such obstruction.</p>	<p>Environment Canterbury will reserve control over the following matters in imposing any conditions:</p> <ol style="list-style-type: none"> 1. The fuel burning rate. 2. Any measures necessary to ensure the ability of the equipment to disperse contaminants, including chimney height, chimney design and emission velocity. 3. Any steps to be taken to ensure maintenance of the fuel-burning equipment. 4. Carrying out of measurements, samples, analyses, surveys, investigations, or inspection, including: 	



Activity	Standards / Terms	Control	Cross Ref.
<p>capacity within one property <u>any management area</u> of greater than 5 megawatts and less than or equal to 20 megawatts; or</p> <p>(c) diesel, petrol, natural gas or liquid petroleum gas, in any internal combustion equipment having a net energy output capacity of greater than 300 kilowatts; or</p> <p>(d) coal, wood, or light fuel oil, in any external combustion equipment having a net combined heat output capacity within one property <u>any management area</u> of greater than 1 megawatt and less than or equal to 3 megawatts;</p> <p>is a controlled activity.</p> <p>For the purpose of this rule a "management area" may contain one or more <u>large scale fuel burning devices, and means:</u></p> <p>a) <u>the property if the property is less than or equal to 1 hectare; or</u></p> <p>b) <u>if the property is greater than 1 hectare, within an area on that property defined by a 100m radius centred on any individual large scale fuel burning device.</u></p>	<p>4. Generators shall only be used for emergency electricity supply, and shall not be used for network load shedding during times of peak electricity demand.</p> <p>5. The concentration of total suspended particulate in combustion gas discharged from all emission stacks, when measured according to the requirements described in <u>Schedule AQL6</u>, shall not exceed 500 milligrams per cubic metre of air adjusted to 0 Celsius, dry gas basis, 101.3 kilopascals and 8% oxygen or 12% carbon dioxide.</p> <p>6. The sulphur content of the fuel to be burned shall not exceed 2% by weight.</p>	<p>(a) monitoring contaminant concentrations;</p> <p>(b) monitoring the opacity of the discharge;</p> <p>(c) recording of the quantity of fuel used;</p> <p>(d) monitoring the emission rate of contaminants; and</p> <p>(e) analysing the cumulative effects of the discharge, in combination with discharges from other sources.</p> <p>5. Provisions of information to the consent authority at specified times.</p> <p>6. Compliance with monitoring, sampling and analysis conditions at the consent holder's expense.</p> <p>7. Duration of consent.</p> <p>8. Review of conditions of consent and the timing and purpose of the review.</p> <p>Notification</p> <p>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.</p>	

Amend 3.5.9.2 Regional rules for discharges to air from large scale fuel burning devices, section **Rule AQL26 External combustion of diesel or kerosene greater than 2 MW to 5 MW or less, gas greater than 5 MW to 20 MW or less, internal combustion of diesel, petrol or gas greater than 300 kW, and external combustion of solid fuel or light fuel oil greater than 1 MW to 3 MW or**



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less outside of the Christchurch Clean Air Zones 1 and 2 - controlled activity, by adding new text after the second paragraph as follows:

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- (b) greater than 1 hectare in area, there may one or more management areas within that property. For the purposes of this rule, the cumulative net combined heat output capacity of all external combustion equipment within 100 metres of the external combustion equipment being considered must be greater than 40 kilowatts and less than or equal to 1 megawatt.

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