

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 HORTICULTURE NEW ZEALAND

(ENV-2007-CHC-291)

(Topic: ENV-2008-308-053)

Appellant

AND

CANTERBURY REGIONAL
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

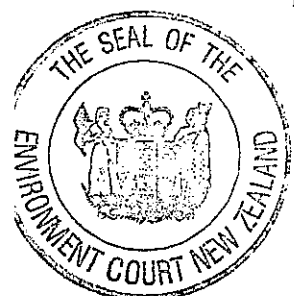
Environment Judge J E Borthwick sitting alone under section 279 of the Act

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 topic determined by this consent order relates to Large Scale Fuel Burning Devices.
- [2] Federated Farmers of New Zealand Incorporated has given notice of an intention to become a party under s274 and has signed the memorandum



setting out the relief sought in respect of the topic 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

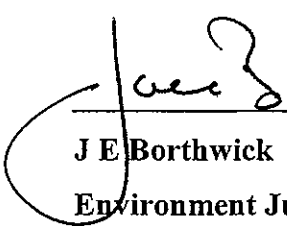
[4] Therefore the Court orders, by consent, that the appeal is allowed to the extent that the Canterbury Regional Council is directed to modify Chapter 3 of the Proposed Canterbury Natural Resources Regional Plan as set out in **Appendix One** attached to and forming part of this consent order.

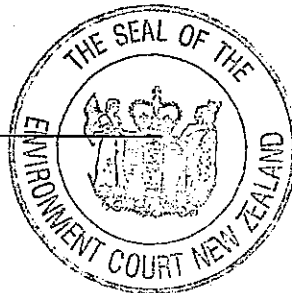
[5] The appeal, in respect of topic ENV-2008-308-053 is otherwise dismissed.

[6] There is no order for costs.

DATED at CHRISTCHURCH

17th 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. Policy AQL19

- a. Amend **Policy AQL19** Prevent significant increases in PM₁₀ emissions from large scale fuel burning devices in the Christchurch Clean Air Zones 1 and 2 and the associated Explanation and principal reasons as follows:

Policy AQL19 **Prevent significant increases in PM₁₀ emissions from large scale fuel burning devices in the Christchurch Clean Air Zones 1 and 2**

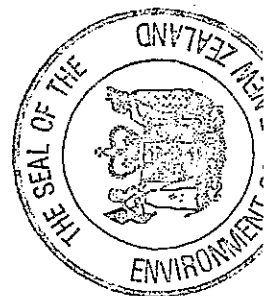
In the Christchurch Clean Air Zones 1 and 2:

- (1) Prevent significant increases in emissions of PM₁₀, and minimise the adverse effects on the environment, from the discharge of contaminants to air from the combustion of fuel in large scale fuel burning devices.
- (2) Recognise large scale fuel burning devices existing as of 1 June 2002 emitting PM₁₀ and enable the continuation of PM₁₀ emissions from such devices provided that the best practicable option is adopted to prevent or minimise the discharge to air of PM₁₀.

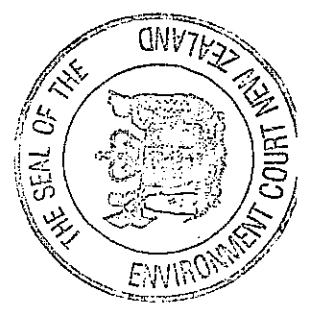
Explanation and principal reasons

Policies AQL14 to AQL18 seek to reduce emissions from the domestic sector, associated with burning solid fuel on small scale fuel burning devices in Christchurch. To achieve reductions in ambient PM₁₀ concentrations it is important that the industrial sector does not significantly increase its emissions and compromise the gains achieved by reducing emissions from the domestic sector.

Policy AQL19 recognises that emissions from large scale fuel burning devices can be improved and reduced through the adoption of more stringent operating standards and greater improvements in efficiency of fuel use. Although at present total industrial emissions represent only 7% of PM₁₀ concentrations in Christchurch ambient air, total PM₁₀ emissions from this source are projected to increase as industrial growth occurs.



Thus, improvements by significant industrial dischargers of PM_{10} are still required for the long term, to meet and maintain the ambient air quality target for PM_{10} ($50 \mu\text{g}/\text{m}^3$ 24 hour average).



MAM-101442-342-1636-V1

Policy AQL 19(2) provides specific recognition of the emissions of PM₁₀ from large scale fuel burning devices existing as of 1 June 2002. These emissions of PM₁₀ are part of the PM₁₀ contaminant loading of the Christchurch clean air zones. Policy AQL 19(1) does not seek an overall cumulative reduction in PM₁₀ emissions from large scale fuel burning devices. Policy AQL 19(2) gives priority for these existing PM₁₀ emissions to continue provided that the emissions are minimised through the adoption of the best practicable option.

Implementation of Policy AQL 19 will require large-scale fuel-burning devices to meet emission standards and limitations, which are more stringent than limits now in place for many existing resource consent holders in this category. These rules rely upon improved operation and increased efficiency of fuel use and, in some cases, the selection of alternative fuels or installation of emission control equipment. Taken together, these measures will markedly reduce existing particulate emission loads from these sources, and help prevent the projected increase in PM₁₀ emissions, if such measures were not imposed.

b. Amend **Method AQL19(c)** as follows:

Method AQL 19(c) Resource consents

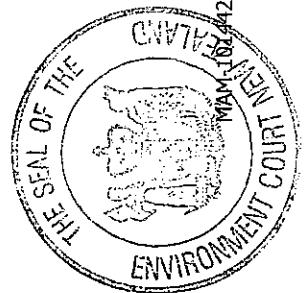
Resource consents may be granted for the discharge to air from large-scale fuel burning devices in the Christchurch Clean Air Zones 1 and 2. These may involve discharges into air, which are specified as limited discretionary or discretionary activities.

Regional Rules AQL16, AQL17, AQL18, AQL18A and AQL19 shall affect, under section 130 of the RMA, the exercise of existing resource consents for discharges of contaminants. When these rules become operative, Environment Canterbury may serve notice, under Section 128 of the RMA, on the holders of all such resource consents of its intention to review the conditions of their resource consent, where in Environment Canterbury's opinion, it is appropriate to do so in order to enable the standards and terms set by the rule to be met. The holders of resource consents shall comply with the standards and terms of Regional Rules AQL16, AQL17, AQL18, AQL18A and AQL19 from the date at which the new conditions on their resource consent commences under section 116 of the RMA.

2. Table 3.1 Summary of Rules

Amend **Table 3.1 Summary of Rules** by adding the following between Rule AQL26 and Rule AQL27:

	AQL18A	<u>External combustion of solid fuel or light fuel oil greater than 3 MW in an existing large scale fuel burning device</u>	Restricted Discretionary
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3. Rule AQL18A

Add new Rule AQL18A Existing large scale fuel burning devices burning solid fuel with a combined heat output 1 MW or less in the Christchurch Clean Air Zones 1 and 2 – restricted discretionary activity as follows:

Rule AQL18A Existing large scale fuel burning devices burning solid fuel with a combined heat output 1 MW or less in the Christchurch Clean Air Zones 1 and 2 – restricted discretionary activity

<u>Activity</u>	<u>Standards / Terms</u>	<u>Restriction of Discretion</u>	<u>Cross Ref.</u>
<p>Notwithstanding Rule AQL18, and except where prohibited by Rules AQL12 and AQL20, the discharge of contaminants into air from burning of solid fuel in the Christchurch Clean Air Zones 1 and 2 in any existing large scale fuel burning devices having a net combined heat output capacity within one property of greater than 40kw and less than or equal to 1 megawatt is a restricted discretionary activity.</p> <p>For the purposes of this rule "existing" means a large scale fuel burning device legally installed and operating:</p> <p>a) on or before 1 June 2002; and</p> <p>b) at the time any resource consent application is made and considered under this rule.</p>	<p>1. Any discharge of contaminant into air shall not be greater than that which may have been lawfully discharged on 1 June 2002.</p> <p>2. After 1 January 2015, the concentration of total suspended particulate in combustion gas discharged from all emission stack(s), measured according to the requirements described in Schedule AQL6, shall not exceed 250 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>3. The concentration of total suspended particulate in combustion gas discharged from all emission stacks, measured according to the requirements described in Schedule AQL6, shall be measured by a person competent in stack emission testing at least once every 5 year period during</p>	<p>Environment Canterbury's discretion is restricted to the following matters:</p> <p>1. Localised adverse effects from the discharge of contaminants to air.</p> <p>2. The extent to which the best practicable option is or should be adopted to prevent or minimise the discharge to air of PM₁₀.</p> <p>3. The fuel burning rate.</p> <p>4. Any measures necessary to ensure the ability of the equipment to disperse contaminants, including chimney height, chimney design and emission velocity.</p> <p>5. Any steps to be taken to ensure maintenance of the fuel-burning equipment.</p> <p>6. Carrying out of measurements, samples, analyses, surveys, investigations, or inspection, including:</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</p>	



Activity	Standards / Terms	Restriction of Discretion	Cross Ref.
	<p><u>which the device is operated.</u></p>	<p><u>with discharges from other sources.</u></p> <p>7. <u>Provisions of information to the consent authority at specified times.</u></p> <p>8. <u>Compliance with monitoring, sampling and analysis conditions at the consent holder's expense.</u></p> <p>9. <u>Duration of consent.</u></p> <p>10. <u>Review of conditions of consent and the timing and purpose of the review.</u></p>	

4. Explanation to Rule AQL18A

- a. Amend 3.5.9.2 Regional rules for discharges of contaminants into air from large scale fuel burning devices, by adding the following heading between the headings for Rule AQL18 and Rule AQL19:

Rule AQL18A Existing large scale fuel burning devices burning solid fuel with a combined heat output 1 MW or less in the Christchurch Clean Air Zones 1 and 2 – restricted discretionary activity

- b. Amend 3.5.9.2 Regional rules for discharges of contaminants into air from large scale fuel burning devices, by adding the following paragraph after the last paragraph under the headings for Rule AQL18 and Rule AQL19:

Rule AQL18A applies to existing solid fuel large scale fuel burning devices that would have otherwise been controlled by Rule AQL18. By 'existing' what is meant is that as of 1 June 2002 (the date of public notification of Chapter 3) the large scale fuel burning devices were legally existing and operating, and continue to be legally operated at the time a resource consent application is made and considered under this rule. At that time these devices form an accepted part of the environment. When replacement resource consent is sought for these devices the consent authority is to consider localised adverse effects on the environment. Further, the consent authority is also to consider the extent to which the proposal adopts the best practicable option to prevent or minimise both localised adverse effects on the environment and the contribution of the large scale fuel burning device to ambient air quality within Christchurch, particularly PM₁₀ ambient air quality.

