

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN RICHARD G BRITTAN

(ENV-2009-CHC-30)

Appellant

AND

CANTERBURY REGIONAL COUNCIL

Respondent

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

In Chambers at Christchurch

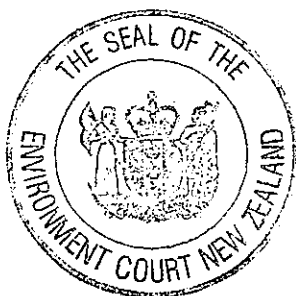
CONSENT ORDER

*Introduction*

[1] The Court has read and considered the appeal and the memorandum of the parties received on 18 December 2009.

[2] The following people have given notice of an intention to become a party under section 274 of the Act and have signed the memorandum setting out the relief sought:

- (a) Waimakariri District Council;
- (b) Association for Independent Research Incorporated;
- (c) David Brittan;



- (d) Emma Frazer;
- (e) Morris Harris; and
- (f) Andrew Stevens

[3] The Court is making this order under section 279(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 changes to Variation 11 to Chapter 3 of the Proposed Canterbury Natural Resources Regional Plan as specified in Appendix 1, attached to and forming part of this order, be made.

[5] The appeal, in respect of the following topics is otherwise dismissed:

- (a) Topic ENV-2009-308-000007 Variation 11 - CAZ 1 & Clean heat Scheme
- (b) Topic ENV-2009-308-000096 Variation 11 - CAZ 1 - Rules & rural land / Rules re: existing solid fuel burners
- (c) Topic ENV-2009-308-000098 Variation 11 - CAZ 2 - Outdoor burning
- (d) Topic ENV-2009-308-000099 Variation 11 - CAZ 1 Outdoor burning
- (e) Topic ENV-2009-308-000100 Variation 11 - Residual matters



[6] The only remaining part of the appeal to be dealt with is Topic ENV-2009-308-000097 Variation 11 - Objective AQL 4 & Rules AQL 79 & 80. This Topic has been put on hold with the CRC to file a status report by 31 March 2010.

[7] There is no order as to costs.

DATED at CHRISTCHURCH this 15<sup>th</sup> day of *January* ~~2009~~ *2010*

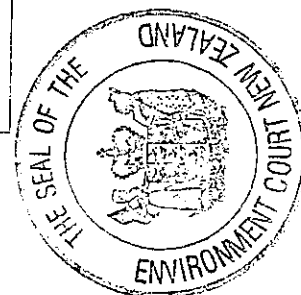
*[Signature]*  
**J E Borthwick**  
**Environment Judge**  
Issued  
**18 JAN 2010**



# APPENDIX ONE - Changes to Variation 11 to Chapter 3 of the Proposed Canterbury Natural Resources Regional Plan

Amend table 3.1 as follows:

Discharges to air from small scale solid fuel burning devices and large scale fuel burning devices in Rangiora Clean Air Zones 1 and 2		Activity Status		Page N°
Area rule applies	Rule N°	Description	Activity Status	Page N°
Rangiora Clean Air Zone 1	AQL74	Open fires installed on or after 1 January 2008	Non-complying	
Rangiora Clean Air Zones 1 and 2	AQL75	Outdoor burning	Non-complying	
Rangiora Clean Air Zones 1 and 2	AQL75A	Outdoor burning of vegetation in winter	Permitted	
Rangiora Clean Air Zones 1 and 2	AQL76	Enclosed burners or open fires contained within heritage buildings	Permitted	
	AQL77	Small scale solid fuel burning device installed after 1 June 2002	Restricted discretionary	
	AQL78	Open fires existing on 1 January 2008	Non-complying	
Rangiora Clean Air Zone 1	AQL79	Enclosed burner installed before 1 January 2001	Non-complying	
	AQL80	Enclosed burner installed after 1 January 2001 but before 1 June 2002	Non-complying	
	AQL81	Small scale fuel burning device installed in a new situation	Non-complying	
Rangiora Clean Air Zones 1 and 2	AQL82	New large scale fuel burning devices fired by solid fuel or light fuel oil	Discretionary	
Rangiora Clean Air Zone 1	AQL83	Existing large scale fuel burning devices fired by solid fuel or light fuel oil	Discretionary	
Rangiora Clean Air Zones 1 and 2	AQL84	Large scale fuel burning devices fired by solid fuel or light fuel oil that do not meet the standards set by Rules AQL82 and AQL83	Non-complying	



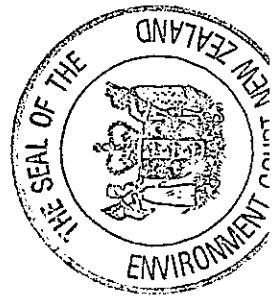
Amend rule AQL75A as follows:

## Rule AQL75A Outdoor burning of vegetation in winter in the Rangiora Clean Air Zones 1 and 2 – permitted activity

Activity	Conditions	Cross Ref.
<p>Notwithstanding Rules AQL29 and AQL75, and subject to Rules AQL36 and AQL37, during the months of May, June, July and August, the discharge of contaminants into air:</p> <p>(a) in the Rangiora Clean Air Zone 2, or</p> <p>(b) in the Rangiora Clean Air Zone 1 originating from land zoned <u>Waimakariri District Plan</u></p> <p>from outdoor burning of vegetation is a permitted activity.</p>	<p>4. Burning shall only occur of 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.</p> <p>2. 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.</p> <p>1. The discharge shall not occur outside the hours of 8 am to 4 pm.</p> <p>2. The discharge shall not occur when the wind causes particles such as smoke to move towards the Rangiora <u>urban area</u> Clean Air Zone 4.</p> <p>3. The discharge shall not occur during the period within which a temperature inversion has formed. (See note 3 below).</p> <p>6. If the wind speed is less than 15 kilometres per hour (4 metres per second), measured 1.1 metre above ground level.</p> <p>7. 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.</p> <p>8. The dispersal or deposition of particles shall not cause an objectionable or offensive effect beyond the boundary of the property where the discharge originates.</p> <p>9. The burn shall be supervised at all times.</p> <p>10. 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.</p>	<p>Policies: AQL29</p>

**Note:**

1. Waimakariri District Council's bylaws relating to the control of fires also apply, which address safety and nuisance issues and must be complied with as well as this rule.
2. Outside of the months of May, June, July and August outdoor burning of vegetation may be permitted in accordance with Rule AQL29.
3. The following are indicators that Condition 3 will not be complied with, being periods of, or future periods when there is a forecast of:
  - a) Temperatures below 5 degrees Centigrade, and
  - b) Wind speed of 3 metres per second or less, and
  - c) Anti-cyclonic conditions, with clear night skies



Amend rule AQL77 as follows:

**Rule AQL77 Small scale solid fuel burning device installed after 1 June 2002 in the Rangiora Clean Air Zone 1 – restricted discretionary activity**

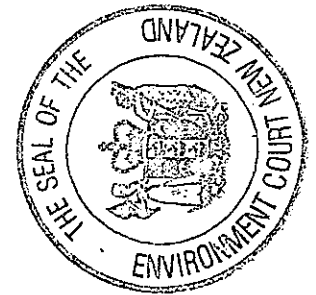
Activity	Conditions	Restriction of discretion	Cross Ref.
<p>Notwithstanding Rules AQL1 and AQL2, and except as controlled by Rules AQL78, AQL79 and AQL80 or prohibited by Rules AQL5 and AQL6, the discharge of contaminants into air in the Rangiora Clean Air Zone 1 from the burning of any solid fuel in any small scale solid fuel burning device <u>located on a site which is:</u></p> <ol style="list-style-type: none"> <li>1. <u>less than 2 hectares in size; or</u></li> <li>2. <u>located within a residential or business zone in the Operative Waimakariri District Plan</u></li> </ol> <p>is a restricted discretionary activity after the latter of the following dates:</p> <ol style="list-style-type: none"> <li>1. 1 May 2010; or</li> <li>2. the day 15 years following the date of its first installation as recorded by the relevant building consent.</li> </ol> <p>Public notification and service of notice:</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>		<ol style="list-style-type: none"> <li>1. Existing and predicted future emission performance of the small scale solid fuel burning device under a range of operating conditions when compared with its manufacturer's design performance at the time of installation.</li> <li>2. Duration of consent</li> </ol>	<p>Policies: AQL24 AQL25</p>



Amend rule AQL79 as follows:

**Rule AQL79 Enclosed burner installed before 1 January 2001 in the Rangiora Clean Air Zone 1 – non complying activity**

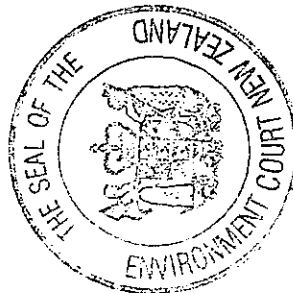
Activity	Conditions	Cross Ref.
<p>Notwithstanding Rule AQL1, and except as permitted by Rules AQL2 and AQL76 or prohibited by Rules AQL5 and AQL6, the discharge of contaminants into air in the Rangiora Clean Air Zone 1 from the burning of any solid fuel in any enclosed burner installed before 1 January 2001, and is located on a site which is:</p> <p>(a) less than 2 hectares in size; or</p> <p>(b) located within a residential or business zone in the Operative Waimakariri District Plan</p>		<p>Policies: AQL23 AQL25</p>
<p>is a non complying activity after the earliest of the following dates:</p> <p>(a) 1 May 2010; or</p> <p>(b) the date upon which there is a registered transfer of ownership of the site on which the enclosed burner is located.</p> <p>For the purposes of this rule, "transfer of ownership" does not include:</p> <p>(a) a transaction in which a person who was a registered proprietor of the land at the date of notification of this rule, remains or becomes a registered proprietor (whether or not the only registered proprietor) of that land after the transfer; or</p> <p>(b) a transaction in which the transferee is a trustee of a trust, and one or more of the transferees is a beneficiary of that same trust; or</p> <p>(c) a transaction for which a legal contract was entered into before this rule was publicly notified.</p>		



Amend rule AQL80 as follows:

**Rule AQL80 Enclosed burner installed after 1 January 2001 but before 1 June 2002 in the Rangiora Clean Air Zone 1 – non complying activity**

Activity	Conditions	Cross Ref.
<p>Notwithstanding Rule AQL1, and except as permitted by Rule AQL2 or prohibited by Rules AQL5 and AQL6, the discharge of contaminants into air in the Rangiora Clean Air Zone 1 from the burning of any solid fuel in any enclosed burner installed after 1 January 2001 but before 1 June 2002, and is located on a site which is:</p> <p>(a) less than 2 hectares in size; or</p> <p>(b) located within a residential or business zone in the Operative Waimakariri District Plan</p> <p>is a non complying activity, where the discharge occurs after the day 15 years following the date of its first installation as recorded by the relevant building permit or building consent.</p>		Policies: AQL23 AQL25

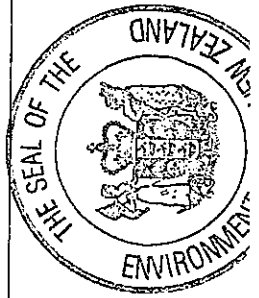


Amend rule AQL81 as follows:

**Rule AQL81 Small scale solid fuel burning device installed in a new dwelling or building, or a dwelling or building that does not have a small scale fuel burning device; or in an extension or alteration to a dwelling or building that does not have a small scale fuel burning device in Rangiora Clean Air Zone 1 – non-complying activity**

Activity	Cross Ref.
<p>Notwithstanding Rule AQL2, with the exception of discharges of contaminants into air from pellet fires permitted by Rule AQL2, and except as prohibited by Rules AQL5 and AQL6, the discharge of contaminants into air in the Rangiora Clean Air Zone 1 from the burning of any solid fuel in any small scale solid fuel burning device which is located:</p> <p>(1) _____ in:</p> <ul style="list-style-type: none"> <li>(a) any dwelling or building for which building consent was issued after 31 December 2007, including any extension or alteration to that dwelling; or</li> <li>(b) any dwelling or building that did not have a small scale solid fuel burning device:               <ul style="list-style-type: none"> <li>(i) at 31 December 2007, including any extension or alteration to that dwelling or building; or</li> <li>(ii) existing and operational within a six month period before the time at which the new small scale solid fuel burning device is proposed to be installed</li> </ul> </li> </ul> <p>and</p> <p>(2) _____ on a site which is:</p> <ul style="list-style-type: none"> <li>(a) less than 2 hectares in size; or</li> <li>(b) located within a residential or business zone in the Operative Waimakariri District Plan</li> </ul> <p>is a non-complying activity, unless building consent was issued and any amendments were incorporated in the building consent in accordance with the Building Act 1991 for the installation of the small scale solid fuel burning device complying with Rule AQL2 before 1 January 2008.</p> <p>For the purposes of this rule, pellet fire means an enclosed burner that solely burns pellet fuel which is made from untreated sawdust bonded together by the woods natural resins through the process of pelletization creating individual pellets of between 6mm and 8mm in diameter and a maximum length of 38mm.</p>	<p>Policies: AQL23 AQL25</p>

MAA-101442-706-127-V1



Amend section 3.5.9.8 Regional rules for discharges in Rangiora Clean Air Zones 1 and 2 as follows:

**Rule AQL75 Outdoor burning in Rangiora Clean Air Zones 1 and 2 – non-complying activity**

Rule AQL75 controls the discharge of contaminants into air from outdoor burning of materials during the winter months, namely May through to August.

Outdoor burning in Rangiora Clean Air Zones 1 and 2 during winter months has the potential to significantly elevate PM<sub>10</sub> concentrations in Rangiora Clean Air Zone 1. Outdoor burning should be avoided during this period unless Policy AQL29 is met. Other than the situation provided for by Rule AQL75A when all the conditions of that rule are met, the consent application for a non-complying activity will enable the circumstances by which outdoor burning to be carefully considered.

**Rule AQL75A Outdoor burning of vegetation in the Rangiora Clean Air Zones 1 and 2 in winter – permitted activity**

Occasionally, during the winter months, rural activities require some types of vegetative matter to be disposed of by burning. In these situations, when the storage of the vegetative material (until after winter) poses a threat to rural activities 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 tightly controlled conditions which reduce the risk of PM<sub>10</sub> emissions from contributing to ambient PM<sub>10</sub> concentrations in the Rangiora Clean Air Zone 1.

The conditions set out within Rule AQL75A seek to prevent emissions from contributing to ambient PM<sub>10</sub> concentrations in the Rangiora Clean Air Zone 1, by (i) minimising the amount of material burnt at any one time on one property; and (ii) ensuring that burning does not take place at times when inversion layers can develop and when ambient concentrations of PM<sub>10</sub> are at their highest. As such, burning may only occur between 8 am and 4 pm, and when the wind is blowing away from the Rangiora Clean Air Zone Urban Area, and when wind speeds are greater than 15 kilometres per hour (4 metres per second). For ease of interpretation, a wind speed 15 kilometres per hour (4 metres per second), being approximately 3 on the Beaufort Scale, which is the speed at which leaves and twigs are in constant motion. 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) 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.

