

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 & NEW ZEALAND
KIWIFRUIT GROWERS**
(ENV-2012-AKL-000178)

**FEDERATED FARMERS OF
NEW ZEALAND INC**
(ENV-2012-AKL-000182)

Appellants

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act

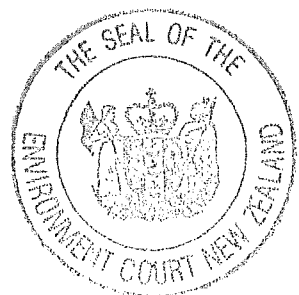
IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. These appeals relate to the Proposed Bay of Plenty Regional Policy Statement. This consent order resolves these appeals as they relate to Topic **ENV-2012-339-000042** Air Quality.
2. In making this consent order the Court has read and considered the notices of appeal and the memorandum of the parties dated 12 July 2013.
3. The following parties have given notice of interest in respect of these parts of those appeals:

- (a) Federated Farmers of New Zealand Inc
- (b) Horticulture New Zealand
- (c) New Zealand Kiwifruit Growers



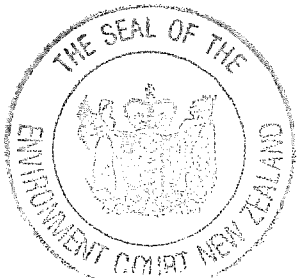
- (d) Carter Holt Harvey Limited
- (e) The Egg Producers Federation of NZ
- (f) Western Bay of Plenty District Council
- (g) J Swap Contractors Ltd
- (h) PowerCo Ltd
- (i) Contact Energy Ltd

4. 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 279. The Court understands for the present purposes that:

- (a) All parties to the proceedings with an interest in this Topic 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 confirm to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

- 5. Therefore the Court orders by consent that the Proposed Bay of Plenty Policy Statement is amended as shown in underline (for additions) and ~~strike-through~~ (for deletions) in **Annexure A** to this order.
- 6. This consent order disposes of all relief sought in these appeals in respect of Topic ENV-2012-339-000042, and that topic is now closed.
- 7. In appeal ENV-2012-AKL-000182 appeal points 5, 6, 7 and 8 are resolved by this order. Appeal points 12, 13, 14, 15, 22, 23, 24, 25, 26 and 27 remain extant.
- 8. In appeal ENV-2012-AKL-000178 appeal points 12.3 and 15.3 are resolved by this order. Appeal points 4.3, 6.3, 7.3, 8.3, 9.3, 10.3, 13.3, 14.3, 18.3, 20.3, 21.3, 22.3, 24.3, 25.3, 26.3, 27.3, 28.3, 29.3, 30.3, 31.3, 32.3, 33.3, 34.3 remain extant.



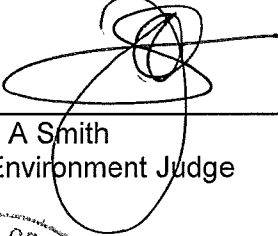
9. There is no order as to costs in relation to this order.

DATED at Auckland this

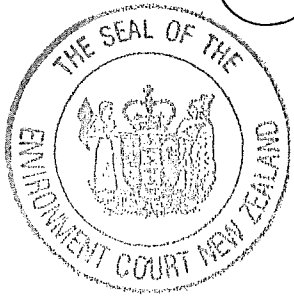
24

day of September

2013



J A Smith
Environment Judge



2.1 Air quality

While the Bay of Plenty region is generally considered to have good air quality, the region does experience localised problems that impact on the amenity and health of the community. Degradation of air quality can be caused by:

Odours – e.g. sewage;

Particulates – e.g. smoke and dust; and

Chemicals – e.g. spray drift.

Amenity values are the qualities and characteristics of an area that influence how people appreciate that area. Amenity values may be diminished through poor air quality. However, people should also be reasonable about the expected amenity of an area. What may be considered offensive or objectionable in an urban area may not necessarily be considered offensive or objectionable in a rural area. As an example, in rural areas background odours from agriculture and horticulture are part of the rural amenity and should be expected and anticipated.

The main sources of odour within the region are from geothermal activity, intensive agricultural activities, sewage-treatment facilities and industrial activities.

Particulate contamination can occur from a number of activities. Smoke emissions arise from many combustion processes, including domestic heating and farm burn-offs. Dust emissions arise from activities such as subdivision development, vehicle movements on unsealed yards and quarrying. Particulates have many adverse effects. These include lung and eye irritation, soiling of clean surfaces and a general reduction in amenity values.

A key air shed in the Bay of Plenty region is the gazetted Rotorua Urban Airshed. The Rotorua Urban Airshed has exceeded national environmental standards for air quality. The main cause is domestic fires used for home heating which release fine particulate matter. Although monitoring shows that air quality elsewhere in the region is meeting the national standards, it is still

important to manage air quality. The Operative Bay of Plenty Regional Air Plan, in particular, plays a significant role through rules on discharges to air.

There is potential in the region for the use of cleaner renewable fuels combined with modern burning technologies. These can reduce fine particulate matter compared with non-renewable fuels.

A range of chemicals and combustion gases are released by industrial activities within the region. These emissions may result from activities such as pulp and paper processes or from the use of solvents. Sprays and chemical compounds, including herbicides, insecticides, fungicides and fumigants (such as Methyl Bromide) used for horticultural, agricultural and quarantine or pre-shipment purposes, are also of concern when used inappropriately. Conflict can arise when sprays affect neighbouring properties.

Conflict can arise when sprays affect other properties. The use of agrichemical sprays may result in significant benefits to community wellbeing e.g. through increased production and pest control and eradication, and limitation of biosecurity risk. However, the misuse inappropriate use of agrichemicals has the potential to damage the health and wellbeing of communities.

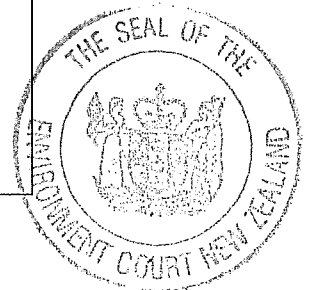
The region includes geothermal systems which naturally discharge the odorous compound hydrogen sulphide (H₂S). In and around these geothermal systems the H₂S odour may be a feature of the existing air quality.

Greenhouse gases, such as carbon dioxide, are produced from the burning of fossil fuels. Central government is responsible for managing the effects of greenhouse gases on climate change, where as local authorities are required to manage the effects of climate change on the environment. This chapter does not directly address greenhouse gases or climate change.



Table 1 Air quality objectives and titles of policies and methods to achieve the objectives.

Objectives	Policy titles	Page	Method titles	Implementation	Page
<p>Objective 1 People and the environment are protected from the adverse effects of odours, chemical emissions and particulates are avoided, remedied or mitigated so as to protect people and the environment.</p>	<p>Policy AQ 1A: Discouraging reverse sensitivity associated with odours, chemicals and particulates</p>		<p>Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans</p> <p><u>Method 5A: Agrichemical users to apply best practice</u></p>	<p>City and district councils</p> <p><u>Regional council</u></p>	
	<p>Policy AQ 2A: Managing adverse effects from the discharge of odours, chemicals, and particulates</p>		<p>Method 23: Provide information about reducing air pollution</p> <p>Method 2: Regional plan implementation</p> <p>Method 23: Provide information about reducing air pollution</p> <p><u>Method 5A: Agrichemical users to apply best practice</u></p>	<p>Regional council</p> <p>Regional council</p> <p>Regional council</p> <p><u>Regional council</u></p>	
	<p>Policy AQ 3A: Managing adverse effects of fine particulate contamination</p>		<p>Method 48: Research and monitor the effects of discharges</p> <p>Method 48A: Research and monitor agrichemical spraydrift effects on human health</p> <p>Method 2: Regional plan implementation</p> <p>Method 5: Bylaws to manage unacceptable levels of fine particulate contamination</p> <p>Method 23: Provide information about reducing air pollution</p> <p>Method 37: Integrate management of airsheds</p>	<p>Regional council</p> <p>Regional council</p> <p>Regional council</p> <p>Regional council, city and district councils</p> <p>Regional council, city and district councils</p> <p>Regional council, city and district councils</p>	



Air Quality Policies

Policy AQ 1A: Discouraging reverse sensitivity associated with odours, chemicals and particulates

Actively discourage:

- (a) Locating new sensitive activities near activities that discharge offensive and objectionable odours, chemical emissions or particulates; and
- (b) Locating new activities that discharge offensive and objectionable odours, chemical emissions or particulates near sensitive activities.

Explanation

After contaminants are discharged to air their effects are often difficult to remedy or mitigate. Therefore it is important to avoid adverse effects of contaminant discharges to air through careful consideration over the location of land use activities. New sensitive activities, such as residential activity, should not be established near land uses or activities that discharge offensive and objectionable odour, particulates or chemicals because the discharge can adversely affect the health of people and lower the amenity values of the surrounding areas. New land use activities that discharge offensive and objectionable odour, chemicals, and particulates also need to be discouraged in sensitive areas. Land uses or activities that may potentially affect sensitive activities include:

- Gases from combustion processes.
- Wastewater treatment plants and agricultural activities that emit odours.
- Horticultural activities and agricultural activities that discharge sprays and odours.
- Open burning that emits smoke.
- Earthworks, poor yard management and quarrying that emit dust.
- Geothermal use and development

In achieving Policy AQ 1A it may be necessary to zone or restrict certain activities, or impose other district plan mechanisms such as building setbacks and planted buffer areas to avoid or mitigate incompatible land uses associated with offensive and objectionable odours, chemical emissions and particulates.

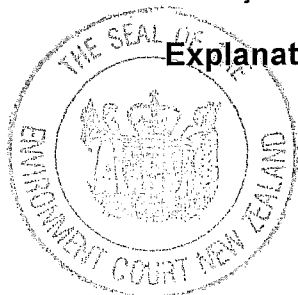
Some activities which generate emissions are locationally constrained (such as ports, geothermal energy developments and quarries) and will have a functional need to locate where sensitive activities may already exist. In such circumstances, consideration may need to be given to mitigation measures rather than avoidance.

Table reference: **Objective 1, Methods 3, 5A and 23**

Policy AQ 2A: Managing adverse effects from the discharge of odours, chemicals, and particulates

Protect people's health and the amenity values of neighbouring areas from discharges of offensive and objectionable odours, chemical emissions and particulates.

Explanation



Offensive and objectionable odours, chemicals and particulates can adversely affect people's health, that of their animals, and the amenity values of the area in which they live. The amenity value of air reflects how clean and fresh it is. This will depend on the nature of the environment and the activities that exist within it. Amenity value ~~can be~~ is reduced by contaminants in the air – such as when dust or smoke reduces visibility or soils surfaces, or when odour is objectionable. Some contaminants may also trigger skin sensitivity and respiratory reactions.

Protecting people's health from discharges to air includes considering the effects of fine particulate matter discharged from human activities. Domestic heating fires are the main source of fine particulate matter (PM₁₀) in some areas.

This policy requires that the Regional Air Plan manage the discharge of offensive and objectionable odour, chemicals and particulates on amenity values and protect people's health.

Table reference: **Objective 1, Methods 2, 5A, 23, and 48 and 48A**

3.2.1 Directive methods

[Add in Section 3.2.1 Directive methods, new Method 5A to read:]

Method 5A: Agrichemical users to apply best practice

Require best practice training, standards and techniques by users of agrichemicals.

Implementation responsibility: Regional council.

3.2.2 Guiding methods

[Amend in Section 3.2.2 Guiding methods, Method 48A to read:]

Method 48A: Research and monitor agrichemical spraydrift effects on human health

Work with the Ministry of Health, ~~other~~ relevant agencies and ~~the horticultural industry industries~~ to research, monitor and report on the effects of agrichemical spray drift on human health ~~during intensive spray periods.~~

Implementation responsibility: Regional council.

Appendix A – Definitions

[Amend in Appendix A the definition of reverse sensitivity to read:]

Reverse sensitivity: The potential for the operation of an existing lawfully established activity to be compromised, constrained or curtailed by the more recent establishment of other activities which are sensitive to the adverse environmental effects being generated by the pre-existing activity.

