

**NOTICE OF FURTHER SUBMISSION BY THE OIL COMPANIES TO PROPOSED PLAN CHANGE 13 TO
THE REGIONAL NATURAL RESOURCES PLAN PURSUANT TO CLAUSE 8 OF THE FIRST SCHEDULE OF
THE RESOURCE MANAGEMENT ACT 1991**

To: The Chief Executive
Bay of Plenty Regional Council
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Via email: air@boprc.govt.nz

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Hereafter, collectively referred to as "the Oil Companies"

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File ref: 16/039

- 1 The Oil Companies' further submissions are as contained in the attached Table.
- 2 The Oil Companies' interest in the proposed plan is greater than the interest of the general public.
- 3 The Oil Companies wish to be heard in support of their further submissions.
- 4 If others make similar submissions, the Oil Companies would not be prepared to consider presenting a joint case with them at any hearing.

Dated at AUCKLAND this 31st day of July 2018

A handwritten signature in black ink, appearing to read 'John McCall', written in a cursive style.

John McCall

Authorised to sign on behalf of the Oil Companies

Submission	Relief Sought By Submitter	Position of Further Submitter	Reason For Support / Opposition
11-1 Waikato Regional Council	<p>Definitions – ‘Offensive or objectionable’ Provide a definition of offensive and objectionable in the Definition of Terms as a definition is provided for noxious and dangerous.</p>	Support in part	The submission is supported in principle. The Proposed Plan Change does not include a definition for the phrase ‘Offensive or objectionable’ and it is considered, given the context of the proposed policy framework and the inclusion of a definition for noxious and dangerous, that a definition for the phrase is appropriate. The wording of the definition should reflect current case law.
11-14 Waikato Regional Council	<p>AQ Rule 17 Recommend that AQ R17(b) be amended to restrict free silica content in blasting material from 5% free silica to 1% free silica which is more consistent with the percentage now provided by commercial supplies and limits placed on blasting media internationally.</p>	Oppose	The submission is opposed. The Oil Companies note that, for example, the Waikato Regional Plan [Rule 6.1.10.3(b)], the Proposed Wellington Natural Resources Plan [Rule R26(f)] and the Proposed Northland Regional Plan [Rule C.7.2.1.4] all permit 5% free silica for abrasive blasting. It is considered that the proposed amendment to restrict free silica content in blasting material from 5% to 1% is not consistent with the existing, and proposed, regional policy framework throughout the country.
17-7 Tauranga Moana Fumigant Action Group	<p>AQ Rule R20 Amend as follows: (a) [delete - Using fumigants other than methyl bromide is a discretionary activity] (b) Using [delete - methyl bromide] [insert - fumigants] with recapture, is a discretionary activity. (c) Using [delete - methyl bromide] [insert - fumigants] without recapture, is a [delete - noncomplying] [insert - prohibited] activity.</p> <p>Any similar or consequential amendments that result from the relief sought.</p>	Support	The submission is supported. The Oil Companies support the use of recapture technology for fumigant gases. The primary concern in relation to fumigant gases is the potential health effects for neighbours (such as port workers). The Oil Companies are not opposed to a different activity status as long as there is a requirement to use recapture technology to achieve that status.

<p>17-8 Tauranga Moana Fumigant Action Group</p>	<p>Definitions ‘Recapture’ Amend as follows: Recapture in relation to fumigation means a process that eliminates [delete - methyl bromide] [insert - fumigant] emissions from fumigation encloses such as buildings, shipping containers or gas proof sheets used to cover target product, by: (a) Capturing [delete - methyl bromide] [insert - fumigant] (not absorbed by the target product) on activated carbon other medium so that it is not released into the atmosphere when the fumigation enclosure is ventilated or any time after, or (b) Destroying the [delete - methyl bromide] [insert - fumigant] (not absorbed by the target product) before a fumigation enclosure is ventilated. Any similar or consequential amendments that result from the relief sought.</p>	<p>Support</p>	<p>The submission is supported. The Proposed Plan Change does not include a definition for the term ‘Recapture’ and it is considered, given the context of the proposed policy framework and the changes supported to the rules framework, that inclusion of a definition for the term is appropriate.</p>
<p>22-5 Waste Management New Zealand</p>	<p>AQ Policy (Reverse Sensitivity) Include Policy 5 from Operative Air Plan as follows: [insert - Separation of new activities from existing activities when the activities are incompatible due to sensitivity or reverse sensitivity, to the discharge of contaminants to air.]</p>	<p>Support</p>	<p>The submission is supported. ‘Reverse Sensitivity’ is recognised and defined by case law. The Proposed Plan Change does not include policy framework in relation to ‘Reverse Sensitivity’. It is considered appropriate, in the context of the Proposed Plan Change, to incorporate the concept of ‘Reverse Sensitivity’ into the proposed policy framework. The Oil Companies support the addition from the Operative Air Plan as proposed by the submitter.</p>
<p>26-12 Rotorua Lakes District Council</p>	<p>AQ Policy P9 Retain policy as proposed. Protect human health and the environment from adverse effects from use of fumigants for quarantine application or pre-shipment application by; (a) enforcing the best practicable option for use of the fumigant, including via the use of recapture</p>	<p>Support</p>	<p>The submission is supported. The Oil Companies consider Policy 9, as proposed, appropriately addresses the requirement for ‘recapture’ technology to be used for fumigation gases, and is therefore supported.</p>

	<p>technology of fumigant gases, the use of safer fumigants, or alternative methods</p> <p>(b) ensuring compliance with relevant exposure levels and management regime set by the New Zealand Environmental Protection Authority to protect human health</p> <p>(c) having particular regard to protecting the health of persons in sensitive activities from fumigant exposure</p> <p>(d)</p>		
30-3 Trustpower Ltd	<p>AQ Policy P2 Amend as follows: [Insert – Seek to] avoid discharges of hazardous [delete – substances] [insert – air pollutants][delete – to air] and where avoidance is not possible, remedy or mitigate the discharge using the best practicable option.</p>	Support in part	<p>The submission is supported. The Oil Companies consider it appropriate to reference hazardous ‘air pollutants’ rather than hazardous ‘substances’ given the context of the Proposed Plan Change (i.e. a Regional Air Plan). Furthermore, it is inappropriate to require the discharge of hazardous substances to be avoided, when such discharges may not be pollutant or in sufficient quantities to be hazardous.</p> <p>The term ‘possible’ should be replaced with the term ‘practicable’. While what is practicable is inevitable possible, what is possible may not always be practicable.</p>
33-3 Ballance Agri-Nutrients Ltd	<p>AQ Objective 3 Amend AQ O3 as follows: Manage discharges of contaminants to air according to their adverse effects on [insert - local] human health, cultural values, amenity values and the environment.</p>	Support	<p>The submission is supported. The Oil Companies support the localised focus proposed by the submitter.</p>
33-4 Ballance Agri-Nutrients Ltd	<p>AQ Objective ‘Reverse Sensitivity’ Insert new objective as follows: Avoid reverse sensitivity effects on lawfully existing business and industrial activities.</p>	Support	<p>The submission is supported. ‘Reverse Sensitivity’ is recognised and defined by case law. The Proposed Plan Change does not include a policy framework in relation to ‘Reverse Sensitivity’. It is considered appropriate, in the context of the Proposed Plan Change, to incorporate the concept of ‘Reverse Sensitivity’ into the proposed policy framework.</p>

45-23 Fonterra Ltd	AQ Policy P4 Amend AQ P4 as follows: [insert - (k) The FIDOL factors (frequency, intensity, duration, offensiveness and location) for determining the adverse effects in relation to dust and odour.]	Support	The submission is supported. The Oil Companies consider it appropriate to use the FIDOL factors for determining the adverse effects in relation to dust and odour.
53-2 Matariki Forests Trading Ltd	AQ Rule R20 MFT considers that recapture destruction requirements should be determined solely by the EPA. Where the EPA considers that recapture destruction technologies are not required (i.e. the science does not support the need) the BoPRC will not impose rules requiring the use of recapture technologies.	Oppose	The submission is opposed. The Oil Companies support the consideration of and use of recapture technology for fumigant gases. The primary concern in relation to fumigant gases is the potential health effects for neighbours (such as port workers). While the Oil Companies are opposed in principle to duplicating regulation, they acknowledge that sometimes that may be necessary to promote the purposes of the RMA.
53-4 Matariki Forests Trading Ltd	AQ Rule R20 MFT asks that the data is used to inform decisions regarding the buffer distances required by Council. In doing so MFT notes that the distances should be no greater than the buffers set by the EPA.	Support in part	The submission is supported in part. The Oil Companies agree with the submission insofar as the data is used to inform decisions regarding the buffer distances required by Council. However, this resides on the ability and integrity to appropriately monitor in the first place. While the Oil Companies are opposed in principle to duplicating regulation, they acknowledge that sometimes that may be necessary to promote the purposes of the RMA. The Oil Companies do not support total reliance on the thresholds determined by the EPA as there may be circumstances when additional monitoring is necessary to determine the buffer distances.
58-5 Horticulture Zealand	Definitions – ‘Offensive or objectionable’ Add a definition for offensive and objectionable effects as follows: Offensive and objectionable effects are effects that cause significant displeasure and need to be assessed in the context of the discharge, in particular the nature, frequency, duration, intensity and location of the discharge to determine the extent to which the adverse effects may be considered offensive or objectionable. Offensive and	Support	The submission is supported. The Proposed Plan Change does not include a definition for the phrase ‘Offensive or objectionable’ and it is considered, given the context of the proposed policy framework, that a definition for the term is appropriate. The wording of the definition should reflect current case law.

	<p>objectionable effects will be assessed as set out in Schedule AQ xxx or Policy AQ xxx Include the following as either a policy or a Schedule in the Plan:</p> <p>Schedule or policy for 'Offensive or objectionable'</p> <p>The terms noxious or dangerous, offensive or objectionable are used in the Plan, usually as a bottom line condition in respect to discharges to air where the condition states: "the discharge does not cause noxious or dangerous, offensive or objectionable adverse effects beyond the boundary of the subject property," or similar wording. This condition seeks to ensure that in the absence of any other condition, the discharge is managed to reduce adverse effects on health and wellbeing (including amenity values and cultural values). These terms are used in the RMA but are not defined. The Plan Change defines "noxious or dangerous", as a discharge that causes an adverse effect on the environment. This is broad brush, but the definition then lists examples which include human health effects, contaminant of water, damage to paintwork etc. These are all adverse effects which are measurable, either through testing, monitoring or visual inspection.</p> <p>The definition of 'offensive and objectionable' relies on the description in this Schedule (or policy).</p> <p>'Offensive' is generally described as "giving or meant to give offence disgusting, foul-smelling, nauseous, repulsive." 'Objectionable' is generally described as "open to objection, unpleasant, offensive."</p> <p>Case law has established that what may be offensive or objectionable under the RMA cannot be defined or prescribed except in the most general of terms. Each case will depend upon its own circumstances and will include the following key considerations:</p>		
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	<p>(i) Location of an activity and sensitivity of the receiving environment – For example, what may be considered offensive or objectionable in an urban area, may not necessarily be considered offensive or objectionable in a rural area.</p> <p>(ii) Reasonableness - Whether or not an activity is offensive or objectionable should be determined by an ordinary person who is representative of the community at large and neither hypersensitive nor insensitive, in deciding whether the activity is disgusting, nauseous, repulsive or otherwise objectionable.</p> <p>(iii) Existing uses - It is important to consider what lawfully established activities exist in an area, i.e. if a new activity requires a consent, the effect of existing discharges of contaminants into air should be considered.</p> <p>The FIDOL factors provide some objectivity to an assessment. When determining whether or not a discharge to air has caused an objectionable or offensive adverse effect regard will be given to the following matters:</p> <ol style="list-style-type: none"> 1. The frequency of events - how often an individual is exposed to the discharge; 2. The intensity of events - as indicated by quantity and strength of discharge produced and the degree of effect; 3. The duration of each event– the length of exposure; 4. The offensiveness of the discharge, having regard to the character and nature of the discharge and background receiving environment; 5. The location of the discharge – the type of land use and nature of human activities in the vicinity of a source, having regard to the sensitivity of the background receiving environment, including taking into account the relevant zone(s) and provisions in the relevant District Plan. There is extensive literature on the FIDOL factors and the Ministry for the Environment has published two Good Practice Guides (for Assessing and Managing Odour, and for 		
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	Assessing and Managing Dust) that set out the analysis process.		
68-11 Ngati Ranginui Iwi Society Inc	AQ Rule R1 Amend to include: ...(d) The discharge demonstrates adequate setbacks from sensitive receptors	Oppose	The submission is opposed. While the Oil Companies generally support the concept of setbacks where these are appropriate, a permitted activity cannot contain elements of discretion, and therefore the Oil Companies oppose the submission.