IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV: 2023-AKL-00160

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE

IN THE MATTER	of the Resource Management Act 1991 (the Act)
AND	
IN THE MATTER	A resource consent application by way of direct referral under s 87G of the Act
BETWEEN	**ALLIED ASPHALT LIMITED**
	Applicant
AND	**BAY OF PLENTY REGIONAL COUNCIL**
	TAURANGA DISTRICT COUNCIL
	Consenting Authorities
AND	**CLEAR THE AIR MOUNT MAUNGANUI CHARITIABLE TRUST and Others**
	274 Parties

LEGAL SUBMISSIONS OF COUNSEL ON BEHALF OF NATIONAL PUBLIC HEALTH SERVICE – TOI TE ORA
12 June 2024

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May it please the Court

1. These are the Reply Submissions of the National Public Health Service - Toi Te Ora (**Toi Te Ora**).

Existing Plant

Consent Envelope

2. The Applicant is seeking 70,000 tonnes per annum as an annual production limit for its Existing Plant. The Applicant's position is the consented envelope was up to 700,800 tonnes per annum for an assumed production of 80 tonnes per hour operating 24 hours a day, 365 days a year. [1]

3. Toi Te Ora's opening submissions supported 68,000 tonnes per annum and considered this was within the consented envelope of the existing consent.[2] The emissions explicitly consented were a maximum hourly emission rate of 4.2 kg/hr total suspended particulate[3] based on an assessment of daily emissions. With respect to the annual consented envelope, the only basis was the stated normal annual operating hours in the consent application (1,000 to 1,500). Based on the consent condition allowing a maximum PM_{10} emission rate of 3.36 kg per hour (being 80% of 4.2 kg/hr TSP), the annual PM_{10} consent envelope would be between 3.4 to 5 tonnes per year. However, long term exposure for key pollutants was not assessed which brings uncertainty as to whether the annual discharges were "expressly allowed by the consent" as required by Regulation 17(1) of the NESAQ.

4. This was not considered by the Applicant in its interpretation which relies on assumptions made by Ms Simpson for continuous operation at an average production rate.[4] Toi Te Ora submits that the Regulation 17(2)(b) requires an explicit consideration of the amount and rate of consented discharges which should be informed by the application, rather than by assumptions.

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[1] EIR Simpson p 115 Table 3-2
[2] Paragraphs 13 to 19 Legal Submissions of Council on Behalf of National Public Health Service – Toi Te Ora 16 May 2024
[3] Condition 5.5 of existing Allied Discharge Permit 62740 dated 30 July 2004.
[4] Transcript p 152 lines 12 to 12

5. The Applicant's evidence is that the actual asphalt production of 68,000 tonnes per year equates to 3.3 tonnes of PM_{10} per year and so on that basis 70,000 tonnes per year is also likely to be within the consent envelope.[5]

6. It is accepted that Regulation 17(2) of the NESAQ would not require consent to be declined as based on the above interpretation the (annual) amount and (daily) rate of PM_{10} discharge to be expressly allowed is the same or less than allowed under the Existing Plant's consent. Toi Te Ora's opening submissions addressed the issues of interpreting consents with large consent envelopes and the implications for future consents.[6]

7. A large consent envelope also has implications in respect of complying with the ambient air quality guidelines in the NESAQ. The revised modelling provided by the Applicant (at residential locations that Toi Te Ora identified within the MMA) predict emissions from the existing plant could cause a breach of the daily NESAQ ambient standard for PM_{10} (50 micrograms per cubic metre with one exceedance permissible in a 12 month period)[7]. This depends on the background concentrations for the cumulative assessment.

8. The modelled prediction column in the Table below is taken from Jennifer Simpson's revised modelling for the additional residential receptors identified within the MMA. This modelling is for daily emissions of PM_{10} from the existing plant running at a maximum daily production rate of 80 tonnes per hour.[8] Ms Simpson's evidence predicts the cumulative impacts of the modelled concentrations are below the 50 micrograms per cubic metre threshold when assuming a background PM_{10} concentration of 30.2 $\mu g/m^3$.

9. Using the realistic but slightly more conservative range of background concentrations adopted in Lou Wickham's evidence this revised modelling shows a breach of the 50 micrograms per cubic metre standard as a 24-hour average. One exceedance is permitted but, the modelling predicts the 2nd, 3rd and 4th highest concentrations at these residential locations would also exceed the standard for the

[5] EIR Simpson p 114 and 115 at Table 3-1 and 3-2
[6] Toi Te Ora Opening submissions at [17]
[7] Schedule 1 Resource Management (National Environmental Standards for Air Quality) Regulations 2004
[8] EIR Simpson Attachment 7. Table 5.p 211

high-end background concentrations. It would also exceed the WHO daily guideline for PM_{10} (45 micrograms per cubic metre with 3-4 exceedances permissible in a year) for the high-end background concentrations.

PM_{10} (µg/m^3, 24-hour average)			
Value	Modelled Prediction	Background Concentration (low – high)	Cumulative Concentration (low – high)
Maximum	9.9	35 – 43	45 – 53
4th highest	7.7	35 – 43	43 – 51

10. Fortunately, the Applicant has proposed a 2.9 kg per hour total particulate matter emission rate which is less than the emission rate modelled (3.36 kg PM_{10} per hour)[9] and which will ensure the daily NESAQ ambient standard for PM_{10} is not likely to be breached.

11. Toi Te Ora considers for clarity condition 7 should also include a provision requiring the mass discharge of PM_{10} from the asphalt plant to not exceed 2.3 kg per hour (this being 80% of the proposed 2.9 kg per hour total particulate matter emission rate).

12. The above issues are important for future consents in terms of providing an explicit basis of consent to ensure Regulation 17 is not breached, to give effect to the intent of Regulation 17 and to ensure the daily NESAQ ambient air quality standard for PM_{10} within the MMA is also not likely to be breached. It is feasible that an Applicant could have sought emissions of up to 4.2 kg per hour (total particulate matter), passed through Regulation 17(2) yet still breached the NESAQ ambient air quality guideline depending on the background concentrations used.

Other conditions

13. Toi Te Ora supports Clear the Air's conditions set out in Submission 4 of its Reply. In particular the stack height being increased consistent with the Higgins condition.

[9] Updated AQA dated Jan 2024. At Appendix D. Table 2.

The uncontested evidence shows was that there is potential for localised odour effects close to the plant and also in the residential areas northeast of the Allied site. There have been significant complaints about odour from the Existing Plant with an abatement notices having been issued. Increasing the chimney height of the stack will increase dispersion which will decrease the ground level concentrations of all contaminants, including odour.

NEW PLANT

Volumes/emission limits

14. The concern Toi Te Ora has with the proposed volume limit of up to 300,000 tonnes per annum (in certain circumstances) and 200,000 tonnes otherwise[10] is that production volumes are directly proportional to emissions. A proposed asphalt production rate of 300,000 tonnes per annum could provide for up to 2.0 tonnes of $PM_{10,}$ 3.9 tonnes of oxides of nitrogen (NOx) on natural gas or 8.4 tonnes of NOx on diesel emitted to an already over-burdened and polluted airshed with implications for future consents (as seen with the existing plant) and cumulative impacts.

15. The justification for production volumes over four times higher than what has been historically produced by the Applicant (with minimal evidence of actual need for such volumes other than to future proof itself), is that there will be an improvement in (some) emissions compared with the existing plant, and the cumulative effects for (some) pollutants are acceptable. Whether the proposal will actually improve *effects* overall, remains in contention, particularly when assessed against no plant.

16. The Applicant's cumulative effects assessment on air quality is a technical one, focussing on known health effects of individual contaminants only, and confined to specific resident's locations at particular areas.[11] The Applicant's planner has accepted there has been no cumulative effects assessment carried out on the estimated 10,000 people working in the airshed for 40 hours a week. His evidence

[10] As proposed by the Applicant
[11] Transcript p 172 line 26

as to cumulative effects is only based on the technical assessment carried out by Jennifer Simpson.[12]

17. This approach does not protect health as it ignores the reality of the existing MMA being polluted for PM_{10} and both the MMA and wider Mount Maunganui area having unhealthy levels for $PM_{2.5}$ and NO_2. While the Applicant's technical assessment acknowledges the existing levels of some pollutants (annual $PM_{2.5}$ and daily and annual NO_2) already exceed WHO guidelines, it relies on an incremental assessment against ambient criteria to justify them as being acceptable.[13] In other instances (annual PM_{10}), background levels are simply assumed to be low.[14]

18. The flaws in this approach become apparent when the incremental effects of the Existing Plant are assessed as generally low compared to the assessment criteria[15] and the cumulative effects assessment shows the Existing Plant modelled impacts complies with guidelines and standards.[16] However, granting a consent for the Existing Plant is barely palatable and only because it is for a limited term. The Applicant's Air Quality expert considers that it is BPO to decommission the Existing Plant as soon as possible.[17]

19. A similar monocular approach of comparing a small increment against a guideline and deeming the contribution acceptable because it is "minimal" was taken in the original application where background levels of pollutants were (erroneously) assumed to be so low that cumulative effects did not need to be considered.[18] Without proper consideration of cumulative effects now, other pollutants, and in particular nitrogen dioxide (NO_2), will continue to exceed healthy levels just like PM_{10} has in the past 20 years that the Applicant has been operating.

20. This narrow approach to cumulative effects can be somewhat mitigated by the use of slightly more conservative backgrounds when assessing cumulative effects as set out in Toi Te Ora's opening submissions.[19] This will give confidence in

[12] Transcript p 251 line 30 to p 252
[13] EIC Simpson p105 at [178](b)-(d)
[14] EIC Wickham Tab 30 p 707 at [43]
[15] EIC Simpson Tab 6 p 76 at [52(a)]
[16] EIC Simpson p 75 at 48
[17] Transcript p 164 line 10
[18] Application Bundle of Documents p 61
[19] Toi Te Ora Opening Submissions at [23]

protecting human health[20] for all people in all parts of Mount Maunganui including residences further within the polluted MMA where background levels are likely to be higher than those assumed.[21]

21. A further risk with a narrow approach to cumulative effects is that it can be used to justify a significant increase in the Applicant's annual asphalt production at the expense of adding to the cumulative burden on the MMA itself.

22. The asphalt production rate of 300,000 tonnes per annum (and 200,000 tonnes per annum) is a "contingency"[22] so the Applicant is not impinged[23] in the next 30 years. It includes the total Bay of Plenty asphalt market for the next 35 (and 25 years) with an assumed 2 percent growth per annum.

23. With a consent allowing for asphalt production of up to 300,000 tonnes per annum the Applicant is explicitly consented to emit up to 2.0 tonnes of PM_{10} to the airshed annually. This is an enormous contingency to build into a consent in a polluted airshed where currently increased production rates relate to increased health risks.[24]

24. It is conceivable that the next applicant also with a new plant will seek a large consent envelope. Based on a narrow cumulative effects analysis, its emissions being an improvement on (some of) its current emissions compared to its outdated plant, and adopting BPO, such an application could also secure an ongoing annual consent envelope of 2.0 of PM_{10}. This will not improve air quality in the MMA.

25. Actual PM_{10} annual emissions based on asphalt production of up to 75,000 tonnes per annum (a realistic volume and still more than the Applicant has produced in its entire consent history), are anticipated to be 0.5 tonnes. In a polluted airshed, and where it is accepted that there are significant adverse health effects, the difference of the cumulative burden on the MMA of 2.0 tonnes of PM_{10} compared with 0.5 tonnes is significant.

[20] Transcript p 378 line 1
[21] Transcript p 145 line 11
[22] Transcript p 89 line 1
[23] Transcript p 89 line 24
[24] Transcript p 313 line 13

26. An alternative way of looking at the effects of emissions from the difference between asphalt production rates of 300,000 tonnes per annum and 75,000 tonnes per annum, is to compare the Treasury published damage costs (social costs per tonne of pollutant) based on $PM_{2.5}$ and NOx emissions set out in Lou Wickham's evidence. Running on natural gas the social costs associated with emissions from the proposed New Plant with an asphalt production rate of 300,000 tonnes per annum is $5,135,229 compared with $1,283,807 for the same plant with a production rate of 75,000 tonnes per annum.[25] This is a significant cost to society to "future proof[26]" the Applicant's consent. The social cost comparison is set out below:

Plant / Scenario	$PM_{2.5}$ (tpy)*	NOx (tpy)	$PM_{2.5}$ and NO_x Social Costs $NZD2024
Existing Drum Plant – waste oil			
Actual (50 tph, 68,000 tpy)	1.9	1.9	$3,991,012
Proposed Batch Plant – natural gas			
Proposed (120 tph, 300,000 tpy)	1.0	3.9	$5,135,229
Actual (120 tph, 75,000 tpy)	0.3	1.0	$1,283,807
Proposed Batch Plant – diesel			
Proposed (120 tph, 300,000 tpy)	1.0	8	$9,864,604
Actual (120 tph, 75,000 tpy)	0.3	2.1	$2,466,151

27. It should be recalled that this activity has quite different characteristics from an activity where diffuse discharges are emitted and are more difficult to estimate and control and test[27] such as unsealed yards or bulk storage. Emissions from a point discharge can be controlled directly by production rates and chimney heights and, importantly, the emissions are able to be directly measured unlike with diffuse discharges.

[25] EIC Wickham Tab 30 p 719 Table 4
[26] Transcript p 106 line 29
[27] Transcript p 134 line 20

28. The Applicant's expert accepted that in principal annual emission limits could be imposed.[28] As emissions are measured, it would simply be a case of multiplying the measured hourly rate by the annual hours of operation to work out the annual emission amount (noting the hourly emission rates may require proportional adjustment for higher, or lower, daily rates of production).[29]

29. The Applicant has stated that annual emissions based on actual asphalt production of 75,000 tonnes per annual would be 0.5 tonnes of $PM_{10,}$[30] and running natural gas emission would be 1.0 tonnes of NOx per year and on diesel would be 2.1 tonnes of NOx. The Applicant is confident in its modelling.[31]

30. Limiting annual emissions of PM_{10} to 0.5 tonnes per annum and NOx emissions to 1.0 tonnes per annum would be minimising emissions to the greatest extent practicable.

31. Applying specific annual limits on emissions of key pollutants, where it is possible to do so, would assist BOPRC to manage the MMA to find reductions of PM_{10} to the greatest extent achievable. It provides an explicit basis of consent and incentivises applicants to decouple their emissions from production.

32. Furthermore, as set out in Toi Te Ora's opening submissions, asphalt production volumes become moot if annual emissions limits are set for these key pollutants.

33. This is also consistent with industry reporting of annual emissions to central government for the emissions trading scheme. Likewise which the new NES for greenhouse gasses which requires emissions plans to be in place with emission targets.[32]

34. If the Court does not impose annual emission limits, then until asphalt production volumes can be decoupled from emissions, limiting production is the only way to control emissions. In this case Toi Te Ora seeks that asphalt production volumes

[28] Transcript p 156 line 30
[29] It is reasonable to assume the Applicant will be careful to record daily production.
[30] EIC Simpson Tab 7 p 115
[31] Transcript p 146 line 15
[32] Regulation 15 Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023

to be limited to the actual volume production modelled of 75,000 tonnes per annum[33] on the basis that this provides an overall slight decrease in effects (as estimated through social damage costs of $PM_{2.5}$ and NOx), compared with the actual operation of the Existing Plant.[34]

35. If the Court does allow the increased asphalt production volumes as proposed by the Applicant without any annual emission limits, then Toi Te Ora seeks that the review conditions specify that the conditions may be modified by reducing any annual volume limits. This is to ensure that there is no debate as to whether volumes can be amended during any review process.

36. In summary, Toi Te Ora seeks an explicit basis of consent for the New Plant with annual emission limits for key pollutants as follows:

    a. An annual PM_{10} emission limit of 0.5 tonnes per year
    b. An annual NOx emission limit of 1.0 tonnes per year

37. If no annual emission limits are imposed then Toi Te Ora seeks that:

    a. Asphalt production volumes be limited to 75,000 tonnes per annum (noting this is the existing production rate with an additional 10%)

    b. The conditions make it explicit volumes can be decreased in a s 128 review.

Natural Gas

38. While the MMA is not polluted for NO_2 (for the purposes of the NESAQ), it is of particular concern as the MMA and wider Mount Maunganui area already experience elevated levels that exceeds WHO guidelines. It has been accepted by the Applicant's expert that it is important to reduce NOx emissions to greatest extent practicable[35] that control over and reduction of all emissions and not just

[33] EIC Simpson p 115
[34] EIC Wickham p 719 at [78]
[35] Transcript p 154 line 30

PM_{10} is appropriate[36]. Given the unhealthy existing levels of NO_2 in the wider area, BPO should be required and in this case BPO requires natural gas to be used.

39. The Applicant has already decided that an arbitrary figure of 150%[37] is the BPO threshold. This is against the social cost increasing significantly[38] if diesel is used at higher asphalt production volumes. An asphalt production of 300,000 tonnes per annum running on diesel sees a 341% increase in NOx emissions compared to emissions from actual operation of the Existing Plant.[39]

40. Therefore Toi Te Ora seeks that New Plant is only permitted to run on natural gas and so conditions 14(b) through 20 are deleted from the Air Discharge consent. If the Court accepts the Applicant's conditions allowing diesel to be used if natural gas is "financially unviable" then Toi Te Ora seeks that an NOx emission limit be imposed of 2.1 tonnes per annum when diesel is used.

Loadout

41. The Applicant does not propose to enclose the loadout area unless odour subsequently becomes an issue. This is on the basis of absence of complaints from neighbours and Ms Simpson's assumption that the Bluesmoke filtration system will work as intended.[40] However, as pointed out by the Regional Council's expert, the Bluesmoke filtration system will not capture all volatile organic compounds and odour.[41] Further, this plant has the ability for the loadout area to be enclosed and this was one of the reasons it was chosen.[42] With proper design, the New Plant would not be subject to the issues raised by the Applicant which are problems associated when a plant is retrofitted with enclosure.[43] Ms Simpson has accepted that from an air quality perspective the greatest extent practicable to fully enclose the loadout area.[44]

[36] Transcript p 155 line 19
[37] Transcript p 116 line 23
[38] Lou Wickham's Correction 15 May 2024 Table 2R
[39] EIC Simpson Tab 7 p 117 Table 3-4
[40] Transcript p 134 line 5-7
[41] Transcript p 300 line 10
[42] EIC Garton p 34 at [44(a)]
[43] Transcript p 373 line 7
[44] Transcript p 163 line 14

42. Therefore Toi Te Ora considers BPO is to fully enclose the load out area, particularly given the factors which make this receiving environment particularly sensitive to odour, cause in part by the Applicant's own activities. This is also consistent with the *McCain* decision (discharging to a polluted airshed and a sensitive location) which plant had a fully enclosed loadout area.[45]

Term

43. The Applicant now seeks 25 years consent term from 35 years. This is still an excessive period of time for a discharge consent in a polluted airshed and where no direct evidence of when the investment will be recovered has been given[46] and where its capital investment was built around a "much shorter time frame" than 35 years.[47]

44. The Applicant and Council rely heavily on the BPO review every 10 years tied to review of consent conditions as being sufficient to justify a lengthy term. [48]

45. BPO has elements of financial viability and involves judgment calls. Already in this consent issues are raised as to whether BPO is being carried out such as fully enclosing the load out area and requiring the plant to be run only on natural gas and with the Regional Council's expert having uncertainty whether the options are actually BPO.[49]

46. According to the Applicant, the BPO review clause is also intended to work like a "negotiation" and an agreed pathway between the applicant and Council.[50] However, there is no input by the public unless Council is unhappy with that negotiation and initiates s 128 review, which is also at Council's discretion.

47. The Applicant has continued to run its outdated plant at increased volumes past its expiry, received abatement notices, been subject to numerous complaints over the

[45] *McCain Foods (NZ) Ltd v Hawke's Bay Regional Council* [2016] NZEnvC 241 and transcript p 372 line 30
[46] Transcript p 335 line 30
[47] Transcript p 117 line 21
[48] Noting that the conditions proposed appear to exclude the new BPO clause 54 as falling under the review condition and it is assumed that this is an error
[49] Transcript p 319 line 3
[50] Transcript p 248 line 8

years, made no improvements to its emissions and used waste oil for the majority of its consent. The Applicant and Regional Council has contributed to the disquiet of this community and must take the community as they find them. They cannot now expect the community to rely on the Applicant and the Regional Council to do any better between them at the next ten-year review. The Regional Council has not insisted on BPO at this stage of the application and would have allowed the maximum, and inappropriate consent term, of 35 years.

48. The opportunity to require the Applicant to implement BPO will only occur every ten years following the BPO review and so twice over the term of the consent. Mr Batchelor in his evidence referred to ensuring that the last five years of the consent period targeted transition.[51] However the term of consent does not reflect this and there is nothing preventing the Applicant from doing what it is doing now, which is using s 124 of the RMA to enable it to continue operating five years past its consent expiry while it "transitions" to a new plant.

49. According to the Regional Council's submissions since the MMA was deemed polluted the longest consent granted in the MMA has been for HR Cement for 20 years. This is not a useful comparison. A cement factory plant has no stack discharges and the transport and storage of cement is totally enclosed.

50. It is not agreed that the *Marr v Bay of Plenty Regional Council* decision has commonality with the present case as suggested by the Regional Council.[52] It is a 2010 decision and was not dealing with a discharge to a polluted airshed.[53] Relevant to the capital investment was past spending including "the hundreds of millions, if not billions, of dollars on acquiring plants and many tens of millions of dollars on upgrading the environmental systems"[54] (which can be contrasted to the $18 million investment for this entire application of which but a fraction relates to environmental improvements). The plant in *Marr* was also anticipated to have an indefinite life with continual reinvestment and upgrading provided that was intimately linked to an on-going reduction in colour discharge. These conditions required regular review and required investment if improvements were not achieved (as opposed to a BPO assessment).[55]

[51] Transcript p 276 line 30
[52] Legal Submissions on Behalf of Consent Authorities at [62]
[53] *Marr v Bay of Plenty Regional Council* NZEnvC
[54] *Marr v Bay of Plenty Regional Council* NZEnvC 347 at [224]
[55] Ibid at 230

51. In *McCain Foods (NZ) Ltd v Hawkes Bay Regional Council*, the term of the discharge consent for a facility that adopted best practice with fully enclosed loadout,[56] was 10 years,[57] although this was not an issue for the Court in the decision.

52. Toi Te Ora seeks that the term of consent for the New Plant be limited to 10 years. It accepts that this is not a long period in terms of the financial investment for the Applicant but it can take comfort that investment is a mandatory factor when it applies for its consent renewal. The factors in this case lend towards a shorter term and one of those factors being the disquiet of the community, have been of the Applicant's own making.

53. Toi Te Ora's expectation is for air quality to continue to improve in five years, with compliance with various health-based air quality guidelines within 10 years. A 10 year term will allow the opportunity for further management and adaption, with community input, if air quality has not improved sufficiently.

54. Regardless of the term, any BPO review should be every 5 years, particularly given the Applicants track history in not making significant improvements to date in respect of emissions from its Existing Plant.[58]

Other Consent Conditions

55. There is no condition requiring low NOx burners for natural gas operation. Toi Te Ora seeks specific performance requirement for low NOx emissions when firing on natural gas being < 30 parts per million by volume (ppmv) @ 3% O_2, dry gas basis (or 60 mg/m^3) as NO_2.[59]

56. Given that certain additives have not been assessed, such as epoxy,[60] it is appropriate to include a condition that there be no other additives to the

[56] Transcript p 372 line 30
[57] [2016] NZEnvC 241 at [85]
[58] Transcript p 93 line 9
[59] Lou Wickham correction statement dated 16 May 2024
[60] Transcript p 109 line 20

manufacturing process (eg epoxy) unless emissions are tested to show there will no increase in emissions of odour or VOCs.

57. Clause 39 requires PM_{10} to be monitored at the boundary. Toi Te Ora considers that an approved method should be used to permit direct comparison with the ambient standard in the NESAQ (other methods require co-location and careful calibration else they can significantly under-read ambient concentrations). It is also not agreed that this monitoring can be arbitrarily ceased. Accordingly, it is requested that clause 39(a) be amended as follows:

> *39. The consent holder must install and operate a PM_{10} air quality monitor at or near the site boundary for the purpose of confirming the effectiveness of dust management measures and identifying when additional measures may be required to avoid offensive or objectionable effects of dust, including that*
>
> *(a) The PM_{10} monitor must ~~be an optical (nephelometer) monitor or reference monitor~~ meet the requirements of Schedule 2 of the NESAQ and be certified as appropriate by Bay of Plenty Regional Council:*
>
> *If the PM_{10} monitoring required by this condition shows an exceedance of any of the trigger levels outlined below, the cause of the exceedance must be investigated by the consent holder. If an investigation indicates that a source or sources within the site have caused the exceedance, all practicable measures must be taken by the consent holder to reduce dust emissions. Investigations and remedial actions undertaken must be recorded and reported in accordance with Condition 47. The trigger levels for investigation are:*
>
> *(a) 150 micrograms per cubic metre calculated as a rolling 1-hour average concentration; and*
> *(b) 65 micrograms per cubic metre calculated as a rolling 12-hour average*
>
> *~~Monitoring may cease with the certification of the Bay of Plenty Regional Council either that there has been compliance with the trigger levels set out above or that the Regional Council is otherwise satisfied with the measures adopted by the consent holder following investigations into the causes of exceedances of those trigger levels.~~*

58. Condition 40 sets out specific items the AQMP should address and these are supported. Toi Te Ora further supports the regular 2-year reviews proposed in Condition 41 but considers that the following additional matters should be considered in these reviews:
    a. Any complaints relating to discharges to air received during the previous year and actions undertaken to resolve them
    b. Potential improvements in emissions monitoring and reporting to increase transparency with the local community
    c. Potential improvements in emissions control to further reduce discharges to air
    d. Relevant updates in the science on the impacts of air pollution.

59. Condition 52(a) should be amended so the annual emissions of PM_{10} and NOx are also reported to Council. Condition 38 for stack testing should be linked to hourly emissions limits.[61]

60. While the s 128 review condition is broad, it appears to be limited to particular times eg every two years or after receipt of specific reports. Toi Te Ora does not agree that a s 128 review should be limited in this way and the Regional Council should be able to instigate a review at any time. In addition it seeks that a matter for review be: (j) Where the Medical Officer of Health has given notice to the Regional Council that there are adverse trends in air quality parameters giving rise to concerns that health may be harmed that need to be addressed.

CONCLUSION

61. For the Existing Plant, Toi Te Ora:

    a. supports an interpretation of the existing consent which is informed by the consent application to ensure that large consent envelopes are not used to get through Regulation 17;
    b. supports particulate matter emission rate of 2.9 kg per hour (as being necessary to ensure that the NESAQ daily ambient standard is not exceeded);
    c. seeks a mass discharge of PM_{10} rate to not exceed 2.3 kg per hour;
    d. supports the conditions sought by Clear the Air.

62. For the New Plant, To Te Ora seeks:

    a. An annual PM_{10} emission limit of 0.5 tonnes per year;
    b. An annual NOx emission limit of 1.0 tonnes per year;
       Or alternatively volumes be limited to 75,000 tonnes per year;
    c. The s 128 review condition confirming that volume is a matter than can be reviewed;
    d. That it can only be operated on Natural Gas (alternatively if diesel is allowed then an annual emission limit of 2.1 tonnes of NOx per year);
    e. A 10 year consent term;
    f. BPO review occur every 5 years;

[61] The conditions incorrectly refer to conditions 22 and 23 and the Applicant is aware of this

g. The loadout area be fully enclosed
h. Requirement low NOx emissions when firing on natural gas being < 30 parts per million by volume (ppmv) @ 3% O_2, dry gas basis (or 60 mg/m^3) as NO_2.
i. No other additives to the manufacturing process (eg epoxy) unless emissions are tested to show there will no increase in emissions of odour or VOCs.
j. Approved PM_{10} monitors only and monitoring not cease (see wording in clause 57 above)
k. Additional review matters (as set out in clause 58 above)
l. Annual emissions of PM_{10} and NOx be reported to Council (condition 52a)
m. Stack testing should be linked to hourly emissions limits (condition 38)[62]
n. S 128 review can take place any time and can be triggered by a Medical Officer of Health notification.

Michelle Paddison

Counsel for National Public Health Service – Toi Te Ora

12 June 2024

[62] The conditions incorrectly refer to conditions 22 and 23 and the Applicant is aware of this