



# Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Amendment Regulations 2005

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 25th day of July 2005

Present:

The Hon Dr Michael Cullen presiding in Council

Pursuant to section 43 of the Resource Management Act 1991, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council (given on the recommendation of the Minister for the Environment after consultation in accordance with section 44 of that Act), makes the following regulations.

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## **Regulations**

### **1 Title**

- (1) These regulations are the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Amendment Regulations 2005.
- (2) In these regulations, the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004<sup>1</sup> are called “the principal regulations”.

<sup>1</sup> SR 2004/309

### **2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

### **3 Interpretation**

- (1) Regulation 3(1) of the principal regulations is amended by revoking the definition of **airshed**, and substituting the following definition:

“**airshed** means—

“(a) the region of a regional council excluding any area specified in a notice under paragraph (b):

“(b) a part of the region of a regional council specified by the Minister by notice in the *Gazette* to be a separate airshed”.

- (2) Regulation 3(1) of the principal regulations is amended by omitting from the definition of **Basel Convention** the words “Convention of”, and substituting the words “Convention on”.

- (3) Regulation 3(1) of the principal regulations is amended by revoking the definition of **hazardous waste**, and substituting the following definition:

“**hazardous waste** means waste that—

- “(a) belongs to 1 or more of the categories in Annex I of the Basel Convention; and
- “(b) has 1 or more of the characteristics in Annex III of that Convention”.

#### **4 Burning of oil**

- (1) Regulation 10(2)(c) of the principal regulations is revoked.
- (2) Regulation 10(2) of the principal regulations is amended by adding the following paragraph:
  - “(d) the burning is—
    - “(i) done by means of a flare; and
    - “(ii) for the purpose of undertaking health and safety procedures in the petroleum exploration and production industry or the petrochemical industry; and
    - “(iii) permitted by a resource consent.”

#### **5 Application of standards**

- (1) Regulation 14 of the principal regulations is amended by revoking paragraph (a), and substituting the following paragraph:
  - “(a) that is in an airshed; and”.
- (2) Regulation 14 of the principal regulations is amended by adding, as subclause (2), the following subclause:
  - “(2) However, if the discharge of a contaminant is permitted by a resource consent, the ambient air quality standard for the contaminant does not apply to the area that the resource consent applies to.”

#### **6 New regulations 17 to 17C substituted**

The principal regulations are amended by revoking regulation 17, and substituting the following regulations:

##### **“17 Application of regulations 17A to 17C**

- “(1) Regulations 17A to 17C apply to an application for a resource consent to discharge PM<sub>10</sub> into an airshed before 1 September 2013, if—
  - “(a) the concentration of PM<sub>10</sub> in the airshed already breaches its ambient air quality standard; and

- “(b) the discharge to be permitted by the resource consent is likely to increase significantly the concentration of  $PM_{10}$  in the airshed.
- “(2) Regulation 17A applies to an application if—
- “(a) there is no regional plan that applies to the airshed; or
- “(b) there is a regional plan that applies to the airshed, but the plan does not comply with regulation 17B(2).
- “(3) Regulation 17B applies to an application if there is a regional plan that applies to the airshed and the plan complies with regulation 17B(2).
- “(4) Regulation 17C applies to an application if the application cannot be granted under regulation 17A or regulation 17B and either—
- “(a) the concentration of  $PM_{10}$  in the airshed, at the time the application is decided, is on or below the straight line path or the curved line path; or
- “(b) the application has been made in circumstances to which section 124 applies and the concentration of  $PM_{10}$  in the airshed, at the time the application is decided, is above the straight line path or the curved line path.
- “(5) In this regulation and regulations 17A to 17C—
- “**curved line path** means a curved line that—
- “(a) starts on the y axis of a graph at a point representing, as at 1 September 2005 or the date that the plan is publicly notified (whichever is the later), the concentration of  $PM_{10}$  in the airshed; and
- “(b) ends on the x axis of the graph at a point representing, as at 1 September 2013, the ambient air quality standard for  $PM_{10}$  in the airshed
- “**regional plan** includes a proposed regional plan
- “**relevant date** means—
- “(a) in the case of an airshed that is the region of a regional council, 1 September 2005:
- “(b) in the case of an airshed that is a part of the region of a regional council, the date of the notice in the *Gazette* that specifies the part to be a separate airshed
- “**straight line path** means a straight line that—

- “(a) starts on the y axis of a graph at a point representing, as at the relevant date, the extent to which the concentration of PM<sub>10</sub> in the airshed breaches its ambient air quality standard; and
- “(b) ends on the x axis of the graph at a point representing, as at 1 September 2013, the ambient air quality standard for PM<sub>10</sub> in the airshed.

**“17A Application must be declined if discharges likely to cause concentration of PM<sub>10</sub> in airshed to be above straight line path**

- “(1) A consent authority must decline an application for a resource consent to which regulation 17(2) applies if the discharge to be permitted by the resource consent is likely to cause, at any time, the concentration of PM<sub>10</sub> in the airshed to be above the straight line path.
- “(2) This regulation does not prevent an application declined under this regulation being decided under regulation 17C if that regulation applies to the application.

**“17B Application must be decided in accordance with regional plan if regional plan provides for curved line path**

- “(1) An application to which regulation 17(3) applies must be granted or declined in accordance with the regional plan applying to the airshed if the regional plan complies with subclause (2).
- “(2) The regional plan must contain—
  - “(a) a curved line path that shows how the ambient air quality standard for PM<sub>10</sub> will be achieved in the airshed on or before 1 September 2013; and
  - “(b) rules that ensure that an application for a resource consent is declined if the grant of the resource consent is likely to cause, at any time, the concentration of PM<sub>10</sub> in the airshed to be above the curved line path.
- “(3) This regulation does not prevent an application declined under this regulation being decided under regulation 17C if that regulation applies to the application.

**“17C Other applications must be declined unless discharges offset**

- “(1) The consent authority must decline an application for a resource consent to which regulation 17(4) applies unless the applicant reduces the amount of PM<sub>10</sub> discharged from another source into the same airshed.
- “(2) If, at the time the application is decided, the concentration of PM<sub>10</sub> in the airshed—
- “(a) is on or below the straight line path or the curved line path, the reduction in discharges must be equal to or greater than the increase in the concentration of PM<sub>10</sub> in the airshed above the straight line path or curved line path caused by the discharge permitted by the resource consent:
  - “(b) is above the straight line path or the curved line path, the reduction in discharges must be equal to or greater than the amount of the discharge permitted by the resource consent.
- “(3) The reduction in discharges of PM<sub>10</sub> must—
- “(a) take effect within 1 year after the grant of the resource consent; and
  - “(b) be effective for the duration of the resource consent.”

**7 Resource consents for discharge of carbon monoxide, nitrogen dioxide, and ozone**

- (1) The heading to regulation 20 of the principal regulations is amended by omitting the words “**nitrogen dioxide, and ozone**”, and substituting the words “**oxides of nitrogen, and volatile organic compounds**”.
- (2) Regulation 20 of the principal regulations is amended by omitting the words “, nitrogen dioxide, or ozone”.
- (3) Regulation 20 of the principal regulations is amended by adding, as subclauses (2) and (3), the following subclauses:
- “(2) A consent authority must decline an application for a resource consent to discharge oxides of nitrogen or volatile organic compounds into air if the discharge to be permitted by the resource consent—

- “(a) is likely, at any time, to cause the concentration of nitrogen dioxide or ozone in the airshed to breach its ambient air quality standard; and
- “(b) is likely to be a principal source of oxides of nitrogen or volatile organic compounds in the airshed.
- “(3) In this regulation, **volatile organic compound**—
- “(a) means a hydrocarbon based compound with a vapour pressure greater than 2 millimetres of mercury (0.27 kilopascals) at a temperature of 25°C; but
- “(b) does not include methane.”

Diane Morcom,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, amend the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004 (“the principal regulations”).

*Regulation 3* amends regulation 3(1) of the principal regulations by substituting new definitions of **airshed** and **hazardous waste**. The new definition of **airshed** clarifies that an airshed is the region of a regional council, and that where a *Gazette* notice specifies a part of a region as a separate airshed the remainder of the region is still an airshed. The new definition of **hazardous waste** is a technical amendment that aligns the definition with the definition of that term in the Basel Convention.

*Regulation 4* amends regulation 10(2) of the principal regulations which prohibits the burning of oil in the open air subject to certain exceptions. The amendments omit a redundant exception, and provide a new exception for oil burnt by means of a flare if done for certain purposes and permitted by a resource consent.

*Regulation 5* amends regulation 14 of the principal regulations, which specifies the circumstances in which the ambient air quality standard for a contaminant applies. The amendment provides an exception. If the discharge is permitted by a resource consent, the standard does not apply to the area that the resource consent applies to.

*Regulation 6* revokes regulation 17 of the principal regulations, which requires a consent authority to decline in certain circumstances an application for a resource consent to discharge PM<sub>10</sub> before 1 September 2013, and substitutes *new regulations 17 to 17C*.

*New regulation 17* specifies the circumstances in which *new regulations 17A to 17C* apply. The new regulations apply to applications for resource consents to discharge PM<sub>10</sub> into an airshed before 1 September 2013 if the concentration in the airshed already breaches its ambient air quality standard and the discharges to be permitted by the resource consents are likely to increase significantly the concentration of PM<sub>10</sub> in the airshed.

*New regulation 17A* applies if there is no regional plan or proposed regional plan that applies to the airshed or there is a regional plan or proposed regional plan that applies to the airshed but the plan does not comply with *new regulation 17B(2)*. An application to which *new regulation 17A* applies must be declined if the discharge to be permitted by the resource consent is likely to cause, at any time, the concentration of PM<sub>10</sub> in the airshed to be above the straight line path (as defined).

*New regulation 17B* applies if there is a regional plan or proposed regional plan that applies to the airshed and the plan provides for a curved line path (as defined). A consent authority may grant or decline the application in accordance with the plan or proposed plan.

*New regulation 17C* applies if the application cannot be granted under *new regulation 17A* or *new regulation 17B*, and either the concentration of PM<sub>10</sub> in the airshed is on or below the straight line path or the curved line path, or the application is made in circumstances to which section 124 of the Act applies and the concentration of PM<sub>10</sub> is above the straight line path or the curved line path. *New regulation 17C* requires a consent authority to decline the application unless the applicant reduces the amount of PM<sub>10</sub> discharged from another source into the same airshed. The reduction must be

equal to or greater than the increase in the concentration of  $PM_{10}$  above the straight line path or curved line path (if the concentration of  $PM_{10}$  is on or below the straight line path or curved line path) or equal to or greater than the amount permitted by the resource consent (if the concentration of  $PM_{10}$  is above the straight line path or curved line path). The reduction must take effect within 1 year after the grant of the resource consent and be effective for the duration of the consent.

*Regulation 7* amends regulation 20 of the principal regulations, which requires a consent authority to decline an application for a resource consent to discharge carbon monoxide, nitrogen dioxide, or ozone if the discharge is likely to breach the ambient air quality standard and is likely to be the principal source of the gas in the airshed. The amendments—

- (a) omit references to nitrogen dioxide and ozone on the basis that nitrogen dioxide and ozone are formed in the atmosphere from other compounds; and
- (b) add a *new subclause (2)* requiring a consent authority to decline an application for a resource consent to discharge oxides of nitrogen or volatile organic compounds if the discharge is likely to cause the concentration of nitrogen dioxide or ozone in the airshed to breach its ambient air quality standard, and is likely to be a principal source of oxides of nitrogen and volatile organic compounds in the airshed.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 28 July 2005.

These regulations are administered in the Ministry for the Environment.

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