

Report 99.192

20 April 1999

File Env/6/2/2

P/CouncilR/Env/1999.192

Report to the Environment Committee
from Nicki Kinghorn, Policy Advisor

Managing the Effects of Discharges to Air from Industrial Fumigation

1. Purpose

To seek the Committee's endorsement of a proposed approach to managing the effects of discharges to air from industrial fumigation.

2. Background

The Council has prepared a Proposed Regional Air Quality Management Plan ("the Plan") to manage discharges to air in accordance with the Resource Management Act 1991 ("RMA"). In the Proposed Plan, fumigation is a permitted activity (Rule 4), subject to the condition that:

There is no dust, odour, gas, or vapour from the process which is noxious, dangerous, offensive, or objectionable, at or beyond the boundary of the property.

This means that resource consents will be required in situations where adverse environmental effects occur at or beyond a property boundary. Until the Plan becomes operative, discharges to air from fumigation are permitted, without any conditions.

In July 1998, the Council received complaints from community groups about suspected adverse effects of a fumigation operation in Grenada North. More recently, the Regional Council received a letter from Wellington City Council, expressing concern on behalf of the City Councillors, and requesting information on the situation at Grenada North, and about any action being undertaken by the Regional Council to address the effects of discharges to air from fumigation.

Consequently Regional Council staff visited the Grenada North site and the operators agreed to cease fumigation activities. Council staff also modelled the potential effects of discharges to air at Grenada North and one other fumigation operation in the Region, and have prepared a report (“the Report”), entitled *Issues and Options for Managing the Effects of Discharges to Air from Fumigation Under the Resource Management Act*, that reviews the options available for addressing such potential effects.

3. **Issues**

There are national regulations (e.g., the Fumigation Regulations 1967, administered by the Ministry of Health) that control fumigation for the purpose of protecting workplace health and safety and public health. In the next 3-5 years, the Environmental Risk Management Authority (“ERMA”) will set toxicity and eco-toxicity standards for hazardous substances, including fumigants, under the Hazardous Substances and New Organisms Act 1996 (“HSNO Act”). However, enforcement of these standards, and control of the wider environmental effects of discharges to air from fumigation activities, will remain the responsibility of regional councils. The primary issue for this Council is whether current controls in the Proposed Regional Air Quality Management Plan, i.e., Rule 4, will adequately manage the effects of fumigation.

Modelling of discharges from recent fumigation activities indicates that they have the potential to cause adverse effects beyond the boundary of the property. Once the plan becomes operative, such activities would breach the condition on Rule 4, and the Council could carry out abatement and enforcement procedures. The Council will rely heavily on complaints based monitoring to identify such fumigation operations. However, members of the public will not necessarily detect discharges from fumigation, and the Council may not be otherwise aware of fumigation activities occurring in the Region. The Report considers further options for managing discharges from air pollution.

4. **Options**

The Council could take a statutory and/or non-statutory approach, to managing discharges to air from fumigation.

4.1 **Non-Statutory Approaches:**

Develop an industry led Code of Practice.

The Pest Control Association of New Zealand is currently co-ordinating the development of an industry led Code of Practice for fumigation. The Council, and other regional councils, can contribute to developing the code to include environmental considerations, as advocated by Policy 8 of the Air Plan.

Encourage best practice from the fumigation industry in the Region. There are only four licensed fumigators in the Region. The Council could establish relationships with the fumigation industry to encourage best practice.

4.2 Statutory Approaches

Add further conditions to Rule 4.

For example, the Council could set minimum distances between fumigation discharges and the boundary of the property, or a maximum rate or concentration of discharge to air from fumigation activities.

Amend Rule 4 to **make fumigation, using common fumigants, a discretionary activity.**

4.3 Discussion

The Council must determine the most appropriate way to manage discharges from fumigation and be satisfied that the means used are the most efficient and effective compared to other means (s.32, RMA). If a statutory approach is adopted before the Plan becomes operative, fumigation will remain permitted without any conditions. Such an approach would delay the Plan becoming operative and any fumigation rules having effect.

The scale of potential adverse effects that will occur while managing discharges from fumigation under Rule 4 is uncertain and, at this stage, amendments to Rule 4 may not improve the situation. While further conditions would provide clearer performance parameters for the fumigator, the Council may still be unaware of some fumigation activities occurring in the Region. A discretionary activity rule would require all fumigators to apply for consents, so the Council would be informed of all fumigation activities in the Region. They would then need to set consent conditions on a case by case basis. Further conditions on the permitted activity rule, or conditions on a resource consent, could be based on estimates from worst case scenarios, using USEPA health standards and guidelines. These may be superseded in 3-5 years time, when toxicity standards for fumigants are approved by ERMA.

A non-statutory approach to managing discharges to air from fumigation could be very effective. The industry led national code of practice for fumigation, already being developed, provides an opportunity to promote nationally consistent practices to minimise the adverse effects of discharges to air from fumigation. It should not be difficult to establish relationships with the few licensed fumigators in the Region to encourage adherence with a code of practice.

The Council can continue to monitor fumigation discharges, and the success of the Code of Practice, with a view to reviewing the need for an amendment to Rule 4 in the future, if unacceptable potential effects of discharges to air from fumigation persist. As the Council may be required to amend Rule 4 in the next 3-5 years to incorporate toxicity standards for fumigants, to be approved by

ERMA, it may be more efficient to delay any other changes to Rule 4 that are deemed necessary, until that time.

In summary, Council staff do not recommend amendments to Rule 4 of the Air Plan at this stage. Instead, a non-statutory approach to managing discharges to air from fumigation is recommended, as follows.

5. Recommendations

That the Council:

- (1) *In co-operation with other regional councils, contribute to the Code of Practice for Fumigation being developed by the Pest Control Association of New Zealand, so as to include environmental considerations in that code;*
- (2) *Work with the fumigation industry in the Region to encourage best practice; and*
- (3) *Continue to monitor the effects of discharges from fumigation activities with a view to reviewing Rule 4 of the Air Plan, if unacceptable potential effects persist.*

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