Decision No. A 90 /2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a reference under clause 14 of the First Schedule to the Act

BETWEEN **G BODLE**

(RMA 544/98)

Referrer

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook (presiding)
Environment Commissioner H A McConachy
Environment Commissioner R M Dunlop

Decision made on the papers

FINAL DECISION

[1] By an Interim Decision, No. A225/2003, the Court made directions about certain modifications required to rules in the Proposed Regional Air Quality Plan for Northland, concerning protection of properties against the drift of chemical sprays. The referrer had sought the imposition of buffer zones, but by an order under s293 the Court focussed the debate on whether buffer zones were an appropriate technique, or whether instead there should be a protective approach based in part on a cross referencing to New Zealand Standard 8409:1999 **Code of Practice for the Management of Agrichemicals.**

[2] It was held that the latter was the appropriate course to follow. Guidance was provided by the Court as to the detail that should appear in two rules in the proposed plan, 9.1 and 10.1 together with an appendix to the plan setting out performance requirements for qualifications of persons applying agrichemicals.

[3] We requested that the parties confer and endeavour to agree the detail of the modifications directed, and sought to have the parties respond by early 2004.

[4] Considerable delays have been experienced in having the parties respond, but ultimately input (jointly) from Northland Regional Council, Carter Holt Harvey, Juken Nissho, Federated Farmers, and Vegetable and Fruit Growers Federation, was received.

[5] Out of an abundance of fairness, the other parties were given further time to comment. They have failed to avail themselves of that opportunity.

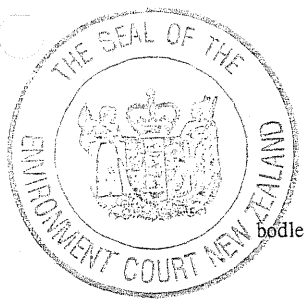
[6] The Court has checked the draft new Rules 9.1 and 9.2, and Appendix 6, supplied by those who responded (copy attached). We find them appropriate and in line with the directions and guidelines contained in the Interim Decision. Accordingly we approve them. The regional plan is to be amended accordingly.

[7] No issue arises as to costs and the Court's file is now directed to be closed.

DATED at **AUCKLAND** this 9th day of June 2005.

For the Court:

L J Newhook
Environment Judge



ANNEXURE A

9. RULES FOR DISCHARGES OF CONTAMINANTS TO AIR FROM INDUSTRIAL OR TRADE PREMISES

9.1 PERMITTED ACTIVITIES

9. The discharge of contaminants to air from agrichemical application by commercial users or contractors is a permitted activity provided that:

(a) The person who will apply the agrichemicals has the following valid qualifications ~~(GROWSAFE™ Certificates have a five year time frame)~~:

(i) For a commercial user, ~~either~~ a qualification that meets the requirements of Appendix 6. Examples of qualifications that meet these requirements include the GROWSAFE™® Introductory ~~(Standard)~~ Certificate, or a GROWSAFE™® Applied Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

(ii) For a commercial contractor using ground based application techniques, a qualification that meets the requirements of Appendix 6. An example of a qualification that meets these requirements is the GROWSAFE™® Registered Chemical Applicators Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

(iii) For a commercial contractor using aerial application techniques, a qualification that meets the requirements of Appendix 6. An example of a qualification that meets these requirements is the GROWSAFE™® Pilot Agrichemical Rating Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

~~(b) All persons applying agrichemicals shall have completed the requirements for achieving the appropriate qualifications specified in (a) of this rule within 6 months of the plan becoming operative.~~

(c) The application is undertaken in a manner that does not exceed any rate, or contravene any other requirement, specified in the label instructions and published application recommendations.

(d) The application shall be undertaken in accordance with all mandatory[1] requirements set out in ~~Part~~Sections 5.1, 5.2, 5.5, 5.6, 5.7, 5.8 and 5.9 and with reference to the introduction to the

[1] Note: In general, mandatory requirements are those that include the word "shall". Non-mandatory requirements are those that include the word "should".

Appendices, and Appendices[2] ~~Z, AA, and DD~~ N, T, V, Y, DD, HH and JJ of New Zealand Standard 8409:1999~~5~~, Code of Practice for the Management of Agrichemicals ~~Users' Code of Practice~~, in order that the Best Practicable Option is implemented to avoid, remedy or mitigate any adverse effects of spraydrift beyond the target property. If there is any conflict between the Regional Air Quality Plan and any provisions of the NZ Standard 8409: 1999, the former shall apply.

(e) The property owner or manager shall keep records of agrichemical use with reference to Appendix C ~~in accordance with Section 5.9~~ of New Zealand Standard 8409:1999~~5~~, Code of Practice for the Management of Agrichemicals ~~Users' Code of Practice~~, and shall make such records available to the Northland Regional Council on request. In addition the property owner shall keep relevant records of dilutent and chemical rates.

(f) Notification is given in accordance with clause 9.1 or 9.2 of this Rule.

9.1 Where agricultural chemicals will be applied, in accordance with Rule 9.1.9 above, to more than two hundred metres of public road, rail or public place, continuously or intermittently, notice of intention to spray must be given in local newspapers or by door-to-door advice and appropriate street signage, excluding railway verges, to occupiers of properties or premises within 30 metres of the area to be sprayed at least eighteen hours and not more than 14 days before application and must include the following information:

(a) The property and area to be sprayed;

(b) The date(s) and general time(s) of the spraying, and in case of poor weather conditions, any alternative dates and general times for spraying;

(c) The brand name and chemical name to be used;

(d) Method of application;

(e) Safety precautions to be taken; and

(f) The contact name, address and telephone number of the owner/manager of the area to be sprayed.

Vehicles or equipment applying agrichemicals must display a sign stating "agrichemical (herbicide/insecticide/fungicide) application in progress" and name of the contractor. A record of this notification must be kept and made available to the Northland Regional Council on request.

9.2 ~~Except as provided for in Chapter 9.1 Permitted Activities Rule 9.1, where agricultural chemicals will be applied except by non-motorised~~

[2] Appendices contain descriptive and supporting information designed to help understand and comply with the Code requirements.

~~hand-held methods to any place, the responsibility of giving notice of intention to spray in reliance of Chapter 9.1 Permitted Activities Rule 9 (above), lies, with the owner/occupier of the property being sprayed to the owners or occupiers of land containing sensitive areas adjoining the area to be sprayed.~~

~~Notice shall be given either orally or in writing,~~

- ~~not less than eighteen hours and not more than two weeks before the proposed commencement of the work; or~~
- ~~Can be in some other form such as an annual or seasonal spray plan.~~

~~This notice, or annual or seasonal spray plan, must include but is not limited to the following information~~

~~(a) The property and area to be sprayed;~~

~~(b) The date(s) and general time(s) of the spraying, and in case of poor weather conditions, any alternative dates and general times for spraying;~~

~~(c) The brand name and chemical name to be used;~~

~~(d) Method of application;~~

~~(e) Safety precautions to be taken; and~~

~~(f) The contact name, address and telephone number of the owner/manager of the area to be sprayed.~~

~~A record of this notification must be kept by the property owner/manager and made available to the Northland Regional Council on request.~~

~~Notification shall not be required from parties who have agreed in writing that it is not required.~~

Where agrichemical application is undertaken by either ground based or aerial application, the owner or occupier of the property being sprayed shall notify the owners or occupiers of sensitive areas adjacent to the area that is to be sprayed.

For the purposes of this rule, "adjacent to" means contiguous with or separated only by a stream, transport corridor or similar narrow margin not more than 30m wide.

Notice shall be given either orally or in writing, not less than eighteen hours and not more than two weeks before the proposed commencement of the work. Notice should include information on where the property spray plan is available.

An annual or seasonal property spray plan shall be prepared, and must include but is not limited to the information described in Appendix

4 of this Plan. Additionally, the annual or seasonal property spray plan shall include the procedures for giving notice of intention to spray as required above.

Explanation. *This rule is consistent with the requirement that ground and aerial based operators be registered and trained. GROWSAFE™® Certificates have been developed and are readily available in Northland.*

The ~~Agrichemical Users~~ Code of Practice for the Management of Agrichemicals, which is now a New Zealand Standard, can be an effective means of preventing or minimising the adverse effects of discharges of agrichemicals to air and therefore implementing the best practicable option. Agrichemical applicators should adopt practices recommended by these codes, including the recording of spray diaries and the preparation of property spray plans. The Code also contains a list of areas or places which are considered to be "sensitive", as well as a Drift Hazard Rating Chart. This enables users to actively select weather conditions, equipment and types of spray to prevent or minimise off-target effects. The application of best practicable option will increase awareness and understanding of the nature of the effects of the discharge on the receiving environment.

Notification can allow mitigating steps to be taken by adjacent land users to minimise the potential adverse effects of agrichemical applications. In order for notification to be an effective tool, early consultation and discussions between neighbours in the preparation of documents such as annual spray plans or seasonal spray plans is considered to be good practice.

Definitions of the terms domestic user, commercial user, commercial contractor, sensitive areas, ground based application methods and ~~air blast~~ aerial application are detailed in the definitions.

10. RULES FOR DISCHARGES OF CONTAMINANTS TO AIR FROM ANY OTHER PLACE OR SOURCE

10.1 PERMITTED ACTIVITIES

5. The discharge of contaminants to air from agrichemical application by commercial users or contractors is a permitted activity provided that:

(a) The person who will apply the agrichemicals has the following valid qualifications ~~(GROWSAFE™ Certificates have a five year time frame)~~:

(i) For a commercial user ~~either~~ a qualification that meets the requirements of Appendix 6. Examples of qualifications that meet these requirements include the GROWSAFE™® Introductory ~~(Standard)~~ Certificate, or a GROWSAFE™® Applied Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

(ii) For a commercial contractor using ground based application techniques, a qualification that meets the requirements of Appendix 6. An example of a qualification that meets these requirements is the GROWSAFE™® Registered Chemical Applicators Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

(iii) For a commercial contractor using aerial application techniques, a qualification that meets the requirements of Appendix 6. An example of a qualification that meets these requirements is the GROWSAFE™® Pilot Agrichemical Rating Certificate~~, or an equivalent qualification as determined by the Northland Regional Council~~.

~~(b) All persons applying agrichemicals shall have completed the requirements for achieving the appropriate qualifications specified in (a) of this rule within 6 months of the plan becoming operative.~~

(c) The application is undertaken in a manner that does not exceed any rate, or contravene any other requirement, specified in the label instructions and published application recommendations.

(d) The application shall be undertaken in accordance with all mandatory[3] requirements set out in Parts 5.1, 5.2, 5.5, 5.6, 5.7, 5.8 and 5.9 and with reference to the introduction to the Appendices, and Appendices[4] ~~Z, AA, and DD~~ N, T, V, Y, DD, HH and JJ of New Zealand Standard 8409:1999~~5~~, Code of Practice

[3] Note: In general, mandatory requirements are those that include the word "shall". Non-mandatory requirements are those that include the word "should".

[4] Appendices contain descriptive and supporting information designed to help understand and comply with the Code requirements.

for the Management of Agrichemicals ~~Users' Code of Practice~~, in order that the Best Practicable Option is implemented to avoid, remedy or mitigate any adverse effects of spraydrift beyond the target property. If there is any conflict between the Regional Air Quality Plan and any provisions of the NZ Standard 8409: 1999, the former shall apply.

(e) The property owner or manager shall keep records of agrichemical use with reference to Appendix C ~~in accordance with Section 5.9~~ of New Zealand Standard 8409:1999~~5~~, Code of Practice for the Management of Agrichemicals ~~Users' Code of Practice~~, and shall make such records available to the Northland Regional Council on request. In addition the property owner shall keep relevant records of dilutent and chemical rates.

(f) Notification is given in accordance with clause 5.1 or 5.2 of this Rule.

5.1 Where agricultural chemicals will be applied, in accordance with Rule 10.1.5 above, to more than two hundred metres of public road, rail or public place, continuously or intermittently, notice of intention to spray must be given in local newspapers or by door-to-door advice and appropriate street signage, excluding railway verges, to occupiers of properties or premises within 30 metres of the area to be sprayed at least one week and not more than one month before application and must include the following information:

(a) The property and area to be sprayed,

(b) The date(s) and general time(s) of the spraying, and in case of poor weather conditions, and alternative dates and general times for spraying,

(c) The brand name and chemical name to be used,

(d) Method of application,

(e) Safety precautions to be taken, and

(f) The contact name, address and telephone number of the owner/manager of the area to be sprayed.

Vehicles or equipment applying agrichemicals must display a sign stating "agrichemical (herbicide/insecticide/fungicide) application in progress"' and name of the contractor. A record of this notification must be kept and made available to the Northland Regional Council on request.

5.2 ~~Except as provided for in Chapter 10.1 Permitted Activities Rule 5.1, where agricultural chemicals will be applied except by non-motorised hand-held methods to any place, the responsibility of giving notice of intention to spray in reliance of Chapter 10.1 Permitted Activities Rule 5 (above), lies with the owner/occupier of the property being sprayed to the owners or occupiers of land containing sensitive areas adjoining the area to be sprayed.~~

~~Notice shall be given either orally or in writing,~~

- ~~not less than eighteen hours and not more than two weeks before the proposed commencement of the work, or~~

- ~~Can be in some other form such as an annual or seasonal spray plan.~~

~~This notice, or annual or seasonal spray plan, must include but is not limited to the following information:~~

~~(a) The property and area to be sprayed,~~

~~(b) The date(s) and general time(s) of the spraying, and in case of poor weather conditions, any alternative dates and general times for spraying,~~

~~(c) The brand name and chemical name to be used,~~

~~(d) Method of application,~~

~~(e) Safety precautions to be taken, and~~

~~(f) The contact name, address and telephone number of the owner/manager of the area to be sprayed.~~

~~A record of this notification must be kept by the property owner/manager and made available to the Northland Regional Council on request.~~

~~Notification shall not be required from parties who have agreed in writing that it is not required.~~

Where agrichemical application is undertaken by either ground based or aerial application, the owner or occupier of the property being sprayed shall notify the owners or occupiers of sensitive areas adjacent to the area that is to be sprayed.

For the purposes of this rule, "adjacent to" means contiguous with or separated only by a stream, transport corridor or similar narrow margin not more than 30m wide.

Notice shall be given either orally or in writing, not less than eighteen hours and not more than two weeks before the proposed commencement of the work. Notice should include information on where the property spray plan is available.

An annual or seasonal property spray plan shall be prepared, and must include but is not limited to the information described in Appendix 4 of this Plan. Additionally, the annual or seasonal property spray plan shall include the procedures for giving notice of intention to spray as required above.

Explanation. *This rule is consistent with the requirement that ground and aerial based operators be registered and trained. GROWSAFE™® Certificates have been developed and are readily available in Northland.*

The ~~Agrichemical Users~~ Code of Practice for the Management of Agrichemicals, which is now a New Zealand Standard, can be an effective means of preventing or minimising the adverse effects of discharges of agrichemicals to air and therefore implementing the best practicable option. Agrichemical applicators should adopt practices recommended by these codes, including the recording of spray diaries and the preparation of property spray plans. The Code also contains a list of areas or places which are considered to be "sensitive", as well as a Drift Hazard Rating Chart. This enables users to actively select weather conditions, equipment and types of spray to prevent or minimise off-target effects. The application of best practicable option will increase awareness and understanding of the nature of the effects of the discharge on the receiving environment.

Notification can allow mitigating steps to be taken by adjacent land users to minimise the potential adverse effects of agrichemical applications. In order for notification to be an effective tool, early consultation and discussions between neighbours in the preparation of documents such as annual spray plans or seasonal spray plans is considered to be good practice.

Definitions of the terms domestic user, commercial user, commercial contractor, sensitive areas, ground based application methods and ~~air blast~~ aerial application are detailed in the Definitions.

APPENDIX 6: PERFORMANCE REQUIREMENTS FOR QUALIFICATIONS TO APPLY AGRICHEMICALS

Training requirements for Permitted Activity conditions in Rule 9.1 – Application of Agrichemicals. These requirements are based on Sections 8.3 and 8.4, NZS 8409: 1999, The Code of Practice for the Management of Agrichemicals

Commercial User

The minimum training programme for applicators of agrichemicals working under supervision and direction shall include:

a. Awareness of the requirements of NZS 8409: 1999 The Code of Practice for the Management of Agrichemicals;
b. Safety Precautions;
c. The basic principles of application equipment.

For applicators working without supervision or direction the minimum training requirements shall be extended to include:

a. Transport, storage and disposal of agrichemicals;
b. Product label and interpretation;
c . Environmental effects and spray drift minimisation;
d. Principles of agrichemical use including weed, pest and disease identification;
e. Calibration of agrichemical equipment.

Commercial Contractor

The minimum training requirements for contract use of agrichemicals (animal and plant health products), where agrichemicals are applied for hire or reward (both ground and aerial application) shall include:

a. First aid, health and safety, and emergency response;
b. Environmental effects, include spray drift minimisation;
c. Notification requirements, including signage;
d. Product label interpretation;
e. Protective equipment selection and use;
f. Transportm, storage and disposal of agrichemicals;
g. Selection, calibration and operation of application equipment for specific operations.