



# **Resource Management (National Environmental Standards for Air Quality) Amendment Regulations 2011**

Anand Satyanand, Governor-General

## **Order in Council**

At Wellington this 18th day of April 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 43 of the Resource Management Act 1991, His Excellency the Governor-General makes the following regulations—

- (a) acting on the advice and with the consent of the Executive Council; and
- (b) acting on the recommendation of the Minister for the Environment made in accordance with section 44 of that Act.

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Amendment Regulations 2011**

2011/103

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## Regulations

### 1 Title

These regulations are the Resource Management (National Environmental Standards for Air Quality) Amendment Regulations 2011.

### 2 Commencement

These regulations come into force on 1 June 2011.

### 3 Principal regulations amended

These regulations amend the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004.

### 4 Name of principal regulations changed

- (1) After the commencement of this regulation,—
  - (a) the principal regulations are called the Resource Management (National Environmental Standards for Air Quality) Regulations 2004; and
  - (b) a reference in another enactment or in a document to the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004 must be read as a reference to the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, unless the context requires otherwise.
- (2) Regulation 1 is amended by omitting “Relating to Certain Air Pollutants, Dioxins, and Other Toxics” and substituting “for Air Quality”.

### 5 Interpretation

- (1) Regulation 3(1) is amended by inserting the following definitions in their appropriate alphabetical order:
  - “**average exceedances of PM<sub>10</sub> per year** has the meaning given by the calculation under regulation 16D
  - “**exceedance** has the meaning given by regulation 13(3)
  - “**meaningful PM<sub>10</sub> data** has the meaning given by regulation 16C

“**PM<sub>10</sub> standard** means the ambient air quality standard prescribed by regulation 13(1) for PM<sub>10</sub>”.

- (2) Paragraph (a) of the definition of **PM<sub>10</sub>** in regulation 3(1) is amended by omitting “microns” and substituting “micrometres”.

#### **6 Burning of oil**

Regulation 10(2)(d)(iii) is amended by omitting “permitted” and substituting “expressly allowed”.

#### **7 New regulation 13 substituted**

Regulation 13 is revoked and the following regulation substituted:

##### **“13 Ambient air quality standards**

- “(1) The ambient air quality standard for a contaminant specified in the first column of the table in Schedule 1 is that the contaminant must not exceed its threshold concentration in an airshed unless the exceedance is a permissible exceedance.

- “(2) The ambient air quality standard for a contaminant is breached if the contaminant exceeds its threshold concentration in an airshed and the exceedance is not a permissible exceedance.

- “(3) In these regulations,—

“**exceedance**, for a contaminant, means an instance where the contaminant exceeds its threshold concentration in an airshed

“**permissible exceedance**, for a contaminant, means 1 of the number of exceedances allowed for the contaminant in an airshed as specified in the third column of the table in Schedule 1

“**threshold concentration**, for a contaminant, means the concentration of the contaminant specified in the second column of the table in Schedule 1 calculated as a mean for the time period specified in that column.”

#### **8 Application of standards**

Regulation 14(2) is amended by—

- (a) omitting “permitted” and substituting “expressly allowed”; and

- (b) omitting “area that the resource consent applies to” and substituting “site on which the resource consent is exercised”.

## 9 New regulations 16A to 16D inserted

The following regulations are inserted after regulation 16:

### “16A Exceptional circumstances causing breach of standard

- “(1) The Minister may, on written application by a regional council, decide that an exceedance of a contaminant in an airshed in the region of the council was caused by exceptional circumstances.
- “(2) The application must be received by the Minister no later than 3 months after the day of the exceedance.
- “(3) The Minister may decide that the exceedance was caused by exceptional circumstances only if he or she is satisfied that the exceedance was caused by exceptional circumstances beyond the reasonable control of the regional council.
- “(4) The Minister must give written notice to the regional council of his or her decision no later than 3 months after the day on which the application was received.
- “(5) If the decision in the notice is that the exceedance was caused by exceptional circumstances, the exceedance must be ignored in determining whether the ambient air quality standard for the relevant contaminant has been breached in the airshed.
- “(6) However, the exceedance must not be ignored in determining whether the standard has been breached for the purposes of regulation 16 (regional council must give public notice if standard breached).

### “16B Allowances for meeting PM<sub>10</sub> standard

- “(1) The PM<sub>10</sub> standard strictly applies to an airshed (so that 1 exceedance is allowed in a 12-month period), unless subclause (3) applies to the airshed and allows more exceedances.
- “(2) Subclause (3) applies to an airshed on and from the first day on or after 1 September 2011 on which the airshed has meaningful PM<sub>10</sub> data for at least a 12-month period in the immediately prior 5-year period (the **start date**).

“(3) In an airshed with the average exceedances of PM<sub>10</sub> per year specified in the first column of the table in this subclause, the PM<sub>10</sub> standard is not breached, or is to be treated as if it were not breached, during the period specified in the second column despite the occurrence of the number of exceedances of PM<sub>10</sub> specified in the third column.

Average exceedances per year (before start date)	Period in which exceedances allowed (on and from start date)	Number of exceedances allowed
1 or fewer	Always	1 or fewer in a 12-month period
More than 1, but fewer than 10	1 September 2011 to 31 August 2016	Unlimited
	1 September 2016 onwards	1 or fewer in a 12-month period
10 or more	1 September 2011 to 31 August 2016	Unlimited
	1 September 2016 to 31 August 2020	3 or fewer in a 12-month period
	1 September 2020 onwards	1 or fewer in a 12-month period

“(4) The average exceedances of PM<sub>10</sub> per year for an airshed under subclause (3) must be calculated under regulation 16D for the 5-year period ending immediately before the airshed’s start date.

“(5) Despite subclause (3), any breach of the PM<sub>10</sub> standard is still a breach for the purposes of the following regulations:

- “(a) regulation 15 (regional council must monitor air quality if standard breached):
- “(b) regulation 16 (regional council must give public notice if standard breached):
- “(c) regulation 17(4)(b) (airshed stops being polluted airshed if PM<sub>10</sub> standard not breached for 5 years):
- “(d) regulation 24A (discharge from certain open fires prohibited).

“(6) If an airshed is established by notice in the *Gazette*, the data (if any) that best applies to the new airshed from the 1 or more airsheds from which the new airshed derived must be treated as if it were the new airshed’s data to determine,—

- “(a) under subclause (2), whether subclause (3) immediately applies or later applies to the airshed; and
- “(b) under subclauses (3) and (4), how the table in subclause (3) applies to the airshed (if subclause (3) applies).
- “(7) To avoid doubt,—
- “(a) subclause (3) does not affect the calculation under regulation 16D of an airshed’s average exceedances of PM<sub>10</sub> per year; and
- “(b) a reference in the third column of the table in subclause (3) to 1 or fewer exceedances being allowed in a 12-month period simply reflects the strict application of the PM<sub>10</sub> standard.
- “(8) This regulation expires on 1 September 2020.

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**Example**

On 1 September 2011, an airshed has meaningful PM<sub>10</sub> data for four 12-month periods in the immediately prior 5-year period (ending on 31 August 2011). There were 42 exceedances of PM<sub>10</sub> in the airshed in those four 12-month periods.

The airshed’s average exceedances of PM<sub>10</sub> per year is (for the purposes of subclause (3))—

$$10.5 = \frac{42}{4}$$

The airshed is therefore (for certain purposes)—

- allowed unlimited exceedances of PM<sub>10</sub> from 1 September 2011 to 31 August 2016;
- allowed 3 exceedances of PM<sub>10</sub> in a 12-month period from 1 September 2016 to 31 August 2020.

The PM<sub>10</sub> standard strictly applies again on 1 September 2020 (allowing 1 exceedance of PM<sub>10</sub> in a 12-month period).

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**“16C Meaningful PM<sub>10</sub> data for airshed**

- “(1) This regulation specifies what is required for an airshed to have meaningful PM<sub>10</sub> data under regulation 16B(2), 16D(2), or 17(4)(a)(i).
- “(2) An airshed has meaningful PM<sub>10</sub> data for a 12-month period if,—
- “(a) when the concentration of PM<sub>10</sub> in the airshed was measured during that period, it was measured in a way that

allowed 24-hour mean concentrations to be calculated under Schedule 1; and

- “(b) the measurements captured data for at least 95% of the 12-month period, after deducting from the duration of the 12-month period any periods of time that were not covered by measurements because of maintenance or calibration; and
- “(c) at least 75% of the data captured was valid data.

**“16D Calculation of airshed’s average exceedances of PM<sub>10</sub> per year**

- “(1) This regulation specifies how to calculate an airshed’s average exceedances of PM<sub>10</sub> per year in a 5-year period for regulation 16B(4) or 17(4)(a)(ii).
- “(2) The average exceedances of PM<sub>10</sub> per year in an airshed is calculated as follows:

$$a = \frac{e}{y}$$

where—

- a is the average per year
- e is the number of exceedances of PM<sub>10</sub> in the airshed in the 1 or more 12-month periods for which the airshed had meaningful PM<sub>10</sub> data in the relevant 5-year period
- y is the number of those 12-month periods.

- “(3) However, if an exceedance of PM<sub>10</sub> (relating to exceptional circumstances) must be ignored under regulation 16A(5), the exceedance must be excluded from the calculation.

**10 New regulation 17 substituted**

Regulation 17 is revoked and the following regulation substituted:

**“17 Certain applications must be declined unless other PM<sub>10</sub> discharges reduced**

- “(1) A consent authority must decline an application for a resource consent (the **proposed consent**) to discharge PM<sub>10</sub> if the discharge to be expressly allowed by the consent would be likely, at any time, to increase the concentration of PM<sub>10</sub> (calculated

as a 24-hour mean under Schedule 1) by more than 2.5 micrograms per cubic metre in any part of a polluted airshed other than the site on which the consent would be exercised.

- “(2) However, subclause (1) does not apply if—
- “(a) the proposed consent is for the same activity on the same site as another resource consent (the **existing consent**) held by the applicant when the application was made; and
  - “(b) the amount and rate of PM<sub>10</sub> discharge to be expressly allowed by the proposed consent are the same as or less than under the existing consent; and
  - “(c) discharges would occur under the proposed consent only when discharges no longer occur under the existing consent.
- “(3) Subclause (1) also does not apply if—
- “(a) the consent authority is satisfied that the applicant can reduce the PM<sub>10</sub> discharged from another source or sources into each polluted airshed to which subclause (1) applies by the same or a greater amount than the amount likely to be discharged into the relevant airshed by the discharge to be expressly allowed by the proposed consent; and
  - “(b) the consent authority, if it intends to grant the proposed consent, includes conditions in the consent that require the reduction or reductions to take effect within 12 months after the consent is granted and to then be effective for the remaining duration of the consent.
- “(4) For the purposes of this regulation,—
- “(a) an airshed becomes a polluted airshed on and from 1 September 2012 or any later day if, for the immediately prior 5-year period,—
    - “(i) the airshed has meaningful PM<sub>10</sub> data for at least a 12-month period; and
    - “(ii) the airshed’s average exceedances of PM<sub>10</sub> (as calculated under regulation 16D) was more than 1 per year; and
  - “(b) an airshed stops being a polluted airshed on and from any day if the PM<sub>10</sub> standard was not breached in the airshed in the immediately prior 5-year period.

- “(5) If an airshed is established by notice in the *Gazette*, the data (if any) that best applies to the new airshed from the 1 or more airsheds from which the new airshed derived must be treated as if it were the new airshed’s data to determine, under subclause (4),—
- “(a) whether the new airshed immediately becomes a polluted airshed; or
  - “(b) whether the new airshed later becomes or stops being a polluted airshed.
- “(6) To avoid doubt,—
- “(a) a polluted airshed to which subclause (1) applies may or may not be an airshed in the region of the consent authority considering an application; and
  - “(b) if an airshed stops being a polluted airshed under subclause (4)(b), it may later become a polluted airshed again under subclause (4)(a).

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**Example**

An airshed’s average exceedances of PM<sub>10</sub> per year is 1.2 for the 5-year period from 1 September 2007 to 31 August 2012. The airshed therefore becomes a polluted airshed on 1 September 2012.

15 March 2020 is the first day after the end of a 5-year period in which the PM<sub>10</sub> standard was not breached in the airshed. The airshed therefore stops being a polluted airshed on 15 March 2020.

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**11 Regulations 17A to 19 revoked**

Regulations 17A to 19 are revoked.

**12 Resource consents for discharge of carbon monoxide, oxides of nitrogen, and volatile organic compounds**

- (1) Regulation 20(1) is amended by omitting “permitted” and substituting “expressly allowed”.
- (2) Regulation 20(2) is amended by omitting “permitted” and substituting “expressly allowed”.

- 13 Resource consents for discharge of sulphur dioxide**  
Regulation 21 is amended by omitting “permitted” and substituting “expressly allowed”.
- 14 Design standard**  
Regulation 23(2) is revoked and the following subclause substituted:
- “(2) The discharge must be measured in accordance with—
- “(a) the method specified in Australian/New Zealand Standard AS/NZS 4013:1999, Domestic solid fuel burning appliances—Method for determination of flue gas emissions; or
  - “(b) for a woodburner excluded from that method, another method that is functionally equivalent.”
- 15 Thermal efficiency standard**  
Regulation 24(2) is revoked and the following subclause substituted:
- “(2) The thermal efficiency must be calculated in accordance with—
- “(a) the method specified in Australian/New Zealand Standard AS/NZS 4012:1999, Domestic solid fuel burning appliances—Method for determination of power output and efficiency; or
  - “(b) for a woodburner excluded from that method, another method that is functionally equivalent.”
- 16 New heading and regulation 24A inserted**  
The following heading and regulation are inserted after regulation 24:
- “Domestic solid-fuel burning open fires*
- “24A Discharge from certain open fires prohibited**
- “(1) A regional council must give public notice the first time that the PM<sub>10</sub> standard is breached in an airshed in its region on or after 1 September 2011.
- “(2) The public notice must—
- “(a) state that subclauses (3) and (4) of this regulation will prohibit the discharge of particles from domestic solid-

- fuel burning open fires installed in the relevant area on or after a certain date (the **date of the ban**); and
- “(b) specify as the date of the ban the day that is 12 months after the day of the breach; and
  - “(c) specify the airshed whose area the notice applies to; and
  - “(d) be given at least 6 months before the date of the ban; and
  - “(e) be given in accordance with the Act.
- “(3) Subclause (4) applies to a domestic solid-fuel burning open fire that is installed in the area of an airshed specified in a notice under subclause (2) on or after the date of the ban specified in the notice.
- “(4) The discharge of particles into any airshed from the open fire is prohibited.
- “(5) For the purposes of this regulation,—
- “(a) the area of an airshed is determined at the date of the related breach of the PM<sub>10</sub> standard; and
  - “(b) once subclauses (3) and (4) apply to an area they always apply to the area, despite the establishment of any new airshed by notice in the *Gazette*.
- “(6) In this regulation, **domestic solid-fuel burning open fire**—
- “(a) means an appliance or a structure inside a domestic building that can burn solid fuel but cannot effectively control the rate of air supply to the combustion zone; and
  - “(b) to avoid doubt, includes a fireplace to which paragraph (a) applies that has a cover or doors that cannot effectively control the rate of air supply to the combustion zone.

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#### Example

The PM<sub>10</sub> standard is breached in a regional council's airshed on 18 April 2013. It was not breached from 1 September 2011 until then.

The council must give at least 6 months' public notice that regulation 24A(3) and (4) will prohibit the discharge of particles from domestic solid-fuel burning open fires installed in the area of the airshed on or after 18 April 2014. The prohibition takes effect accordingly.

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**17 New heading and regulation 28 inserted**

The following heading and regulation are inserted after regulation 27:

*“More stringent rule, resource consent, or bylaw prevails*

**“28 More stringent rule, resource consent, or bylaw prevails**

A rule, resource consent, or bylaw that is more stringent than these regulations prevails over the regulations.”

**18 Schedule 1 amended**

The heading and items in the third column of the table in Schedule 1 are omitted and the heading and items set out in Schedule 1 of these regulations are substituted.

**19 Schedule 2 amended**

- (1) The items relating to PM<sub>10</sub> in the second column of Schedule 2 are amended by adding “; or” to the second item and also by adding the items set out in Part 1 of Schedule 2 of these regulations.
- (2) The item relating to sulphur dioxide in Schedule 2 is omitted and the item set out in Part 2 of Schedule 2 of these regulations is substituted.

**20 Transitional provision about exceptional circumstances**

A regional council’s application under regulation 16A(1) must relate to an exceedance that occurred on or after the day on which these regulations commenced.

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**Schedule 1**  
**Heading and items substituted in**  
**Schedule 1**

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**Number of exceedances allowed**

- 1 in a 12-month period
- 9 in a 12-month period
- None
- 1 in a 12-month period
- 9 in a 12-month period
- None

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**Schedule 2**  
**Items inserted and substituted in**  
**Schedule 2**

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Part 1  
 Items relating to PM<sub>10</sub>

<b>Contaminant</b>	<b>Monitoring method</b>
	Australian Standard AS 3580.9.8:2008, Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—PM <sub>10</sub> continuous direct mass method using a tapered element oscillating microbalance analyser; or
	Australian/New Zealand Standard AS/NZS 3580.9.11:2008, Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—PM <sub>10</sub> beta attenuation monitors

Part 2  
 Item relating to sulphur dioxide

<b>Contaminant</b>	<b>Monitoring method</b>
Sulphur dioxide	Australian Standard AS 3580.4.1:2008, Methods of sampling and analysis of ambient air—Determination of sulfur dioxide—Direct reading instrumental method

Rebecca Kitteridge,  
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 rename the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004 as the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 and amend those regulations (the **principal regulations**) in the following ways.

A number of regulations are amended to refer to an activity being “expressly allowed” (instead of “permitted”) by a resource consent. This aligns with the wording of the Act and avoids any confusion with permitted activities.

*A new regulation 13* replaces the current regulation. The new regulation describes ambient air quality standards, and breaches of those standards, in a way that is consistent with the other amendments in these regulations.

*A new regulation 16A* is inserted. The new regulation lets the Minister decide that an exceedance in an airshed must be ignored in determining whether the ambient air quality standard for the relevant contaminant has been breached (for most purposes). The Minister may make the decision only if he or she is satisfied that the exceedance was caused by exceptional circumstances beyond the reasonable control of the relevant regional council.

*A new regulation 16B* is inserted. *Subclause (3)* of the new regulation applies to an airshed from a certain date only if there is meaningful PM<sub>10</sub> data for the airshed at that date. *Subclause (3)* potentially allows additional exceedances of the threshold concentration of PM<sub>10</sub> in an airshed, first, in the period from 1 September 2011 to 31 August 2016 and, secondly, in the period from 1 September 2016 to 31 August 2020. The PM<sub>10</sub> standard is treated as if it were not breached in the airshed (for some purposes) despite the additional exceedances.

A *new regulation 16C* is inserted. The new regulation specifies what is required for an airshed to have meaningful PM<sub>10</sub> data under other provisions.

A *new regulation 16D* is inserted. The new regulation specifies how to calculate an airshed's average exceedances of PM<sub>10</sub> per year for use in other provisions.

Regulations 17 to 19 are revoked. Those regulations restricted the granting of resource consents to discharge PM<sub>10</sub> into an airshed. They are replaced by a *new regulation 17*. The new regulation imposes different restrictions on the granting of such resource consents. The restrictions apply if the discharge to be expressly allowed by a proposed consent would be likely to increase the concentration of PM<sub>10</sub> by a certain level in a polluted airshed. The regulation specifies when an airshed becomes, or stops being, a polluted airshed, which can happen only on and from 1 September 2012. There are exceptions to the restrictions that allow an existing resource consent to be replaced or a new resource consent to be granted in return for the applicant reducing (or offsetting) PM<sub>10</sub> discharges elsewhere.

Regulations 23 and 24 are amended so that the discharges from a woodburner can be measured, or the thermal efficiency of a woodburner can be calculated, using another method if the specified method excludes the woodburner.

A *new regulation 24A* is inserted. The new regulation requires a regional council to give public notice the first time the PM<sub>10</sub> standard is breached in an airshed in its region on or after 1 September 2011. In accordance with the notice, it is effectively prohibited to use a domestic solid-fuel burning open fire installed in the airshed 12 months after the day of the breach or later.

A *new regulation 28* is inserted. The new regulation clarifies that a rule, resource consent, or bylaw that is more stringent than the principal regulations prevails over those regulations.

Schedule 1 is amended by replacing the third column of the table for consistency with *new regulation 13*.

Schedule 2 is amended by adding or updating methods by which PM<sub>10</sub> or sulphur dioxide may be monitored in an airshed.

These regulations come into force on 1 June 2011.

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2011/103

**Resource Management (National  
Environmental Standards for Air Quality)  
Amendment Regulations 2011**

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 21 April 2011.  
These regulations are administered by the Ministry for the Environment.

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