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Rapunzel De Leon-Mulawin
Analyst - Monitoring, Compliance and Review
Environmental Protection Directorate
Ministry for the Environment
PO Box 10362
WELLINGTON 6143

via e-mails: rapunzel.mulawin@mfe.govt.nz & air@mfe.govt.nz

Dear Rapunzel

Proposed Amendments to the National Environmental Standards for Air Quality

Business New Zealand is pleased to have the opportunity to provide a submission to the Ministry for the Environment on its discussion document entitled 'Proposed Amendments to the National Environmental Standards for Air Quality', dated June 2010.¹

Introduction

BusinessNZ supports the overall direction of the review of air quality standards. While the provision of certainty for business across New Zealand was apparently a factor motivating policy makers in the current regulatory approach to address the problem, its application is blunt, misdirected and ill-conceived. Inefficient (that is, poorly targeted) regulations, while invariably well-intentioned, act as a drain on the economy by distorting resource allocation and reducing overall economic welfare.

In contrast, the proposed approach outlined in the discussion document is likely to result in an appropriate regulatory response to business emissions that is better directed at the source of the problem, measured in its application, and proportionate (both to the size of the problem, and to its source). More specifically, BusinessNZ supports the proposals to increase the permitted number of exceedences, allow for exceptional events, and to extend the timeline. Joined with a mix of information gathering, and guidance

¹ Background information on Business New Zealand is attached in Appendix One.

and compliance strategies, this should provide a powerful, well-targeted combination. Importantly the prohibitions on industry consents are to be repealed. BusinessNZ particularly welcomes this.

However, mandatory offsets for new industry consents in breaching airsheds after 2018 are still being actively considered as one of the two preferred options. BusinessNZ considers that in light of the range of other initiatives, the appropriateness of implementing mandatory offsets now, from 2018, is unclear. This issue is the focus on this submission.

The Case for Mandatory Offsets Now, from 2018

The Technical Advisory Group (the 'TAG') found that the restrictions on the ability of regional councils to use industrial air-discharge consents if they are not achieving the standard should be repealed (recommendation [f]).

The TAG report stated that:

" we agree the approach is poorly designed policy as it doesn't link the solution with the major cause of the problem."

and

"More generally the policy of penalising industry alone is poor practice because it reduces the international competitiveness of New Zealand industry, does not respect existing property rights and is likely to impact most strongly on small and medium sized enterprises (because larger enterprises are more likely to have the resources to lobby successfully to get around the regulations)."²

The discussion document proposes the repeal of the prohibition on resource consents. However, despite the detailed analysis of the TAG, one of the two preferred options retains the imposition of mandatory offsets for new industry consents in breaching airsheds now, from 2018.

The option to retain (albeit in a modified form) mandatory offsets has been characterised as a 'do no harm' or 'back-stop' approach to the removal of consent conditions as it is considered that the removal of these conditions removes support for the protection of public health and the environment by providing a bottom line standard. In other words, businesses need to be seen to do their fair share and in doing so, be seen to contribute to the reduction in health problems associated with poor air quality.

While this is not an unreasonable objective, it belies the need to ensure that a good public policy case can be made for such an intervention. In other words, that the proposed intervention addresses a clearly defined problem. The TAG did not think that such a case could be made and BusinessNZ is inclined to

² Report of the Technical Advisory Group on National Air Standards, entitled 'Air Quality – Getting the Right Balance', dated 10 November 2009, page 37.

agree with the TAG's analysis. This view is reinforced by the fact that the net present value of option 4(a), with mandatory offsets, is not dramatically better than option 4(b), the option without mandatory offsets (in fact, the net present value of option 4(a) is fractionally worse).

In seeking the use of regulatory tools that are fit-for-purpose, BusinessNZ remains unconvinced that the mandatory implementation of offsets as proposed is appropriate for the following reasons:

1. it is extremely difficult to determine now, in light of the range and expected effectiveness of other initiatives proposed being put in place (such as an air compliance strategy) whether mandatory offsets will even be required by 2018. Indeed, the discussion document itself states that:

"It is also anticipated that airshed compliance will be achieved with increased ministerial oversight *in the years leading up to 2018.....*"³ (emphasis added)

2. the predominant cause of the problem by 2018 is still likely to be vehicles and home heating, suggesting that mandatory offsets are as likely to be a disproportionate response in 2018, than consenting restrictions are now;
3. while the proposal appropriately protects the property rights of existing businesses, the allocation of the air 'resource' on what is effectively a 'first-come, first-served' basis creates an artificial competitive imbalance between existing (pre-2018 consented) and new businesses. This may perversely tilt the effect of the approach towards the retention of old, emitting technology as the additional mandatory cost makes new businesses uneconomic;
4. the implementation of mandatory offsets now implies that industry is unwilling, or unable to take voluntary action from this point forward. This is unlikely to be true as consumers become more sophisticated about, and aware of, the environmental impact of the goods and services they consume and as businesses seek to exploit competitive advantages; and
5. the availability of an easily targeted business-focused mechanism for which business is obliged to pay is likely to become the focus of the compliance regime, to the detriment of the other compliance options available to local authorities. This incentive problem is a key issue with the current regime.

The 'option value of waiting'

Given the reservations outlined above, and the presence of a comprehensive range of other proposals in the discussion paper, it is Business New Zealand's

³ Ministry for the Environment discussion document entitled 'Proposed Amendments to the National Environmental Standards for Air Quality', dated June 2010, page 27

belief that there is likely to be value, at least in the first instance, in waiting to see whether the benefits from the other proposals are delivered before moving to mandatory offsets.

This is generally known as 'the option value of waiting'. In addressing complex policy issues it is often the case that multiple solutions are proposed. However, single policy measures should be used (at least initially) where possible, so that their effectiveness can be assessed. If the responses are inadequate (in other words, the expected benefits do not materialise), then the original intervention can be intensified or additional measures deployed. The effect of waiting is to practically set a higher cost-benefit threshold for those interventions that cause market changes that are uncertain but irreversible.

Mandatory Offsets – Alternative Options

In light of the above, BusinessNZ's preference is Option 4(b). However, while the case for implementing mandatory offsets now, from 2018, can not be described as compelling, this does not mean inaction. BusinessNZ would also propose that consistent with 'waiting to see', that a further review be undertaken in 2016. This review would be aimed at assessing the effectiveness of the suite of measures implemented now, and determining whether more action is required from business to address its air quality discharges. BusinessNZ understands that research proposals for an updated assessment of health impacts are being called for now and that results should be available by that time, providing a better basis for health assessments.

The use of mandatory offsets could be implemented after that review, should a more compelling case for their introduction be able to be made.

As a part of the package to be implemented now, it would also be appropriate to identify any barriers to the voluntary adoption of new cleaner industrial technology and facilitate its uptake.

Should this not be considered sufficient, consideration could also be given to the inclusion of a legislative threat of the introduction on mandatory offsets in 2018. BusinessNZ considers that a credible commitment to introduce mandatory offsets in 2018 combined with facilitating the voluntary uptake of new cleaner technology in the meantime is more likely to deliver the desired behavioural changes from business at a lower cost than option 4 (a). A decision whether or not to trigger the threat would be based on the 2016 review.

Finally, should the Ministry for the Environment still remain unconvinced by these suggested alternatives, and wish to implement a mandatory offset requirement now, from 2018, it is important that:

1. effort is made to reduce any uncertainty regarding how the criteria for the requirement for mandatory offsets would work in practice. In particular, it is unclear whether new consents which would give rise to the need for mandatory offsets are those for new activities (and not a

new consent on the expiry of an existing consent), or a new consent for an increase in an existing activity that is not covered by the existing consent. BusinessNZ considers that new consents should cover new activities by either an existing or new business for which no consent previously exists;

2. that innovation and choice be the defining characteristics of the offset regime. Generally, the most efficient means of allocating a scarce resource (in this case, an airshed) is via an appropriate price discovery mechanism such as an auction. This would provide businesses with an ability via mutually beneficial trading, to discover who most values the ability to emit or who can efficiently abate at least cost.

BusinessNZ recognises that a formal auction may be difficult to operate if the market is too 'thin'. However, the concept of allowing businesses to find the lowest cost means of delivering a given verifiable reduction in emissions is a sound one.⁴ The expectation should not be that wood or coal burners will be replaced, but that the widest possible range of emission reduction sources can be accessed. For example, the resource consent applicant should have the choice of either abating directly via the use of new processes or technology, purchasing reductions from other emitters (business and/or household), or entering into an arrangement with an offset aggregator (as a possible new business opportunity). In this scenario, the local council could have any number of roles, varying from providing an on-line trading platform to facilitate the discovery of the price that consent applicants are willing to pay for offsets relative to the price being offered by parties who provide offsets, to directly acting as the offset aggregator, or simply regulator and information provider (assessing the consent and 'pointing' to who can provide offsets); and

3. the competitive imbalance created between existing and new businesses is, if possible, addressed. Consideration could, for example, be given to a variant that introduces the mandatory requirement from a later date (say, 2020), but grandparents in the requirement for all activities, as existing consents roll-off and new activities are consented, after that date.

Summary

BusinessNZ welcomes the work undertaken by both the TAG and the Government. Both have clearly listened to the real concerns of the business community regarding the impact of the current regulatory regime. The approach taken to this issue is no better reflected than in the title of the TAG report – 'Getting the Balance Right'.

⁴ BusinessNZ notes that not all particulate matter is of equal toxicity. So captured within the concept of "a given verifiable reduction in emissions" is the need to ensure that the situation does not arise where emissions of more toxic particulate matter is allowed to be offset by reducing emissions from a lower toxicity source.

However, the consultation document retains an option to use mandatory offsets. BusinessNZ has reservations about their use. While BusinessNZ can appreciate the drivers behind the inclusion of such an option, fundamentally its adoption is not supported by the analysis. But business is not after a free lunch. As such BusinessNZ has set out some alternative options that it considers are better targeted at the problem being addressed and merit serious consideration by the Ministry for the Environment.

BusinessNZ looks forward to working with the Ministry for the Environment to ensure that an appropriate outcome is reached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Carnegie', with a stylized flourish at the end.

John A Carnegie
Manager, Energy, Environment and Infrastructure
Business New Zealand

APPENDIX ONE: ABOUT BUSINESS NEW ZEALAND

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 54 strong Major Companies Group, and the 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

