



Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 3rd day of July 2023

Present:

The Right Hon Chris Hipkins presiding in Council

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for the Environment made in accordance with section 8(1) and (2) of that Act.

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Order

1 Title

This order is the Severe Weather Emergency Recovery (Resource Management—Burning of Waste) Order 2023.

2 Commencement

This order comes into force on 5 July 2023.

3 Revocation

This order is revoked on the close of 15 December 2023.

4 Interpretation

In this order, unless the context otherwise requires,—

Act means the Resource Management Act 1991

affected area means—

- (a) the region of the Hawke’s Bay Regional Council; and
- (b) the district of the Gisborne District Council

commercial scale means a level of production that could reasonably be expected to be used for wholesale or retail supply

Hastings Airshed means the part of the Hawke’s Bay region of that name specified in the Hawke’s Bay Regional Airshed Notice 2009 (*Gazette* 2009, p 3670)

Napier Airshed means the part of the Hawke’s Bay region of that name specified in the Hawke’s Bay Regional Airshed Notice 2009 (*Gazette* 2009, p 3670)

responsible person means the owner or occupier of land described in clause 5, or a person authorised by the owner or occupier to undertake a waste burning activity on that land

waste means substances or objects, on land described in clause 5, that require disposal, and—

- (a) were deposited during a severe weather event; or
- (b) are directly related to agricultural or horticultural production and were damaged by a severe weather event

waste burning activity means burning of waste in the open air, including discharges associated with that burning, that—

- (a) would require a resource consent under section 9 or 15 of the Act; or
- (b) has any status other than that of a permitted activity under—
 - (i) the district or regional plan of a local authority; or
 - (ii) a national environmental standard.

5 Application of clauses 6 and 7

Clauses 6 and 7 apply in respect of a waste burning activity undertaken by a responsible person on rurally zoned land that is primarily used for agricultural or horticultural purposes on a commercial scale and is—

- (a) located in the affected area; but
- (b) not located in the Hastings Airshed or the Napier Airshed.

6 Modification of requirements in relation to burning of waste in open air

- (1) A waste burning activity must be treated as a permitted activity for the purposes of the Act and any secondary legislation, plan, or rule made under the Act.
- (2) However, subclause (1) applies only if the following conditions are met (which must be treated as conditions on the permitted activity for the purposes of the Act):
 - (a) the responsible person must undertake the waste burning activity in accordance with the permitted activity standards set out in the Schedule; and
 - (b) all burning activity must cease by the close of 1 November 2023.

7 Modification of Resource Management (National Environmental Standards for Air Quality) Regulations 2004

An exceedance of a contaminant in an airshed in the region of the Hawke's Bay Regional Council or the district of Gisborne District Council that results from a waste burning activity undertaken in accordance with clause 6 must be treated as being caused by exceptional circumstances for the purposes of regulation 16A of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, despite regulation 16A(1) to (4) of those regulations.

Schedule

Permitted activity standards

cl 6

1 Actions required before waste burning activity

Before undertaking the waste burning activity, the responsible person must—

- (a) make efforts to remove from the waste—
 - (i) the materials identified in regulations 7 to 10 of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004; and
 - (ii) materials prohibited from being burnt in the open air by provisions of the Hawke's Bay Regional Resource Management Plan, Hawke's Bay Regional Coastal Environment Plan, or the Tairāwhiti Resource Management Plan (as applicable); and
- (b) have a fire management plan that—
 - (i) is commensurate with the scale and estimated volume of waste to be burnt; and
 - (ii) includes the matters specified in clause 2; and
- (c) submit the fire management plan to the Hawke's Bay Regional Council or Gisborne District Council (as applicable); and
- (d) notify the following of the proposed waste burning activity during normal working hours at least 2 working days before the day on which the waste burning activity is proposed to start:
 - (i) the relevant regional and district council;
 - (ii) Fire and Emergency New Zealand;
 - (iii) the New Zealand Transport Agency;
 - (iv) the appropriate medical officer of health;
 - (v) the owner or occupier of any land adjoining the land on which the waste burning activity is to be undertaken.

2 Content of fire management plan

- (1) The purpose of a fire management plan is to avoid and mitigate the effects of waste burning.
- (2) The fire management plan must include the following matters:
 - (a) the proposed time of the waste burning activity;
 - (b) the location of the waste burning activity;
 - (c) details of the substances or objects that make up the waste that is to be burnt;

- (d) the weather conditions forecast at the location at the proposed time of the waste burning activity;
- (e) the methods to be used to minimise the spread of smoke and other particulates;
- (f) the methods to be used to extinguish the fire;
- (g) contact details of the responsible person.

3 Waste burning activity requirements

The responsible person must ensure that the waste burning activity—

- (a) is undertaken in wind conditions of not less than 10 km per hour and not greater than 25 km per hour; and
- (b) is managed in accordance with the fire management plan; and
- (c) is supervised at all times.

4 Actions required after waste burning activity

- (1) After the waste burning activity, the responsible person must ensure that—
 - (a) sampling and testing of the ash and soil is conducted by a suitably qualified and experienced practitioner; and
 - (b) the test results are provided to the Hawke’s Bay Regional Council or the Gisborne District Council (as applicable) as soon as practicable after they become available; and
 - (c) the waste burning activity site is left undisturbed for 5 working days after the date on which the test results are provided to the Hawke’s Bay Regional Council or the Gisborne District Council (as applicable); and
 - (d) if the soil testing indicates that the level of 1 or more heavy metals (including, but not limited to, arsenic, copper, chromium, lead, or zinc) or polycyclic aromatic hydrocarbons is above the lesser of the following, the waste burning activity site is remediated to below the applicable level:
 - (i) the commercial or industrial outdoor worker standard in *Methodology for Deriving Standards for Contaminants in Soil to Protect Human Health*, Ministry for the Environment, June 2011;
 - (ii) the investigation trigger value (80%) in *Exploring the implementation of ecological soil guideline values for soil contaminants*, Manaaki Whenua/Landcare Research, June 2022; and
 - (e) if a waste burning activity site is unable to be remediated to below the applicable level described in paragraph (d), any contaminated ash or soil resulting from the waste burning activity is deposited at an approved disposal facility.
- (2) For the purposes of subclause (1), **suitably qualified and experienced practitioner** has the meaning set out in *Contaminated Land Management Guidelines*

No 1: Reporting on contaminated sites in New Zealand, published by the Ministry for the Environment in June 2021.

Diana Hawker,
Acting Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023 and its effect is temporary. The order comes into force on 5 July 2023 and is revoked on the close of 15 December 2023.

The order makes the burning of waste in the open air on certain land (**permitted burn land**) a permitted activity. The burning of waste in the open air would otherwise be a prohibited activity under the Resource Management Act 1991, the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, and the Hawke's Bay Regional Resource Management Plan, the Hawke's Bay Regional Coastal Environment Plan, or the Tairāwhiti Resource Management Plan (the **relevant legislation**). The permitted burn land—

- must be in the region of the Hawke's Bay Regional Council or the district of the Gisborne District Council; and
- must be rurally zoned and primarily used for agricultural or horticultural purposes on a commercial scale; but
- must not be in the Hastings or Napier Airshed (areas defined under the Resource Management (National Environmental Standards for Air Quality) Regulations 2004).

The relevant legislation is modified to allow the burning of waste in open air only if the owner or the occupier of the permitted burn land or their authorised person (the **responsible person**)—

- burns the waste on permitted burn land; and
- complies with the permitted activity standards set out in the *Schedule*.

Regulation 16A of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 is also temporarily modified in respect of an exceedance of a contaminant in an airshed in the region of the Hawke's Bay Regional Council or the district of Gisborne District Council that results from a waste burning activity. The effect of the modification is that the exceedance of a contaminant in the airshed must be ignored in determining whether the ambient air quality standard for the relevant contaminant has been breached in the airshed, without the need to make an application to the Minister.

This order provides for the modification of the Resource Management Act 1991 and instruments made under that Act only. It does not modify the effect of other legislation that may apply to the burning of waste in the open air.

Statement of reasons

*This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 10 of the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERLA**).*

The relevant Minister (the Minister for the Environment) is satisfied that this order is necessary or desirable for 1 or more purposes of the SWERLA and is no broader than is reasonably necessary to address the matters that gave rise to the order.

The SWERLA requires that orders are not broader than is reasonably necessary. This order has been confined to 2 of the most severely affected local authorities. It has also been limited in time.

The Minister for the Environment is further satisfied that the order does not breach section 11 of the SWERLA, nor does it limit the rights and freedoms in the New Zealand Bill of Rights Act 1990 but if it does limit those rights and freedoms is a justified limit.

The engagement process described in section 9 of the Act has been complied with. Public consultation took place between 9 and 13 June 2023.

A draft of this order was reviewed by the Severe Weather Events Recovery Review Panel. A copy was also provided to the Regulations Review Committee. The Minister for the Environment had regard to the recommendations and comments provided by them.

Overview

The SWERLA creates the ability to issue Orders in Council to assist communities affected by the severe weather events to respond to, and recover from, the impacts of the events. The purpose is to provide for the planning, rebuilding, and recovery of affected communities and to aid economic recovery. It enables other legislation to be relaxed, or to operate more flexibly, to allow for this.

The order makes temporary changes to the Resource Management Act 1991 (**RMA**), the National Environmental Standards for Air Quality (**NESAQ**), and relevant regional and district plans to—

- temporarily make open air burning of waste generated by the recent severe weather events a permitted activity within the Hawke's Bay Region and Gisborne District for a specific period of time; and
- temporarily exempt Hawke's Bay Regional Council (**HBRC**) and Gisborne District Council (**GDC**) from needing to apply under the NESAQ to the Minister for the Environment if the burning of waste leads to an exceedance of a contaminant in an airshed in the region. The effect is that the exceedance must be ignored in determining whether the ambient air quality standard for the rele-

vant contaminant has been breached in the airshed, without application to the Minister.

The changes relate to the delivery of the SWERLA's purpose by supporting the operation of other legislation (the RMA) or enabling it to operate more flexibly, to take account of the severe weather events (*see* section 3(2)(b) of the SWERLA).

Context

Recent severe weather, including Cyclones Hale and Gabrielle, caused significant disruption to the affected regions, including to the primary sector in Hawke's Bay and Te Tairāwhiti. This includes the creation of significant volumes of mixed waste material generated as a result of the events, as large quantities of debris were collected, transported, and then deposited by flood waters beyond property boundaries. The waste includes treated and untreated timber, vegetation and flood debris, mixed plastic, wire and metals, tyres, and sediment. Separation of different waste streams from the mixed waste piles is difficult and it could take several months, have prohibitively high costs, and poses safety risks for those attempting the separation.

Cyclone-damaged primary sector businesses (especially orchards, viticulture, vegetables, and pastoral farming) are particularly impacted by the volume of mixed waste and debris that has accumulated on their properties. Horticulture NZ estimates 100 horticultural properties across Hawke's Bay have such piles. Removal of the mixed waste is a critical first step before the land can be returned to productivity.

Central government has provided significant sediment and debris funding to both councils and commercial landowners to assist the management of those wastes and councils are encouraging the separation of waste as part of the funding process. Hawke's Bay Regional Council has informed the Ministry that there are multiple examples in Hawke's Bay where landowners have separated their mixed waste piles, and those segregated wastes are awaiting collection by council-funded services for appropriate reuse, recycling, or disposal. However, given the complexity of some waste piles, it is unlikely that this approach will remove all waste piles within the desired time frames.

The NESAQ and regional plans both prohibit open burning of materials that would release toxic gases and particulates (eg, treated timber and plastic). It is likely that those materials will be present throughout the mixed waste debris.

The SWERLA creates the ability to issue Orders in Council to assist communities affected by the severe weather events to respond to, and recover from, the impacts of those events. This is to provide for the planning, rebuilding, and recovery of affected communities and aid economic recovery. It enables other legislation to be relaxed, or operated more flexibly, to allow for this.

The Minister for the Environment identified that temporary changes to the RMA, the NESAQ, and relevant plans, by Order in Council, can assist in achieving the purposes of the SWERLA and can be implemented through this process.

Those changes will assist landowners to manage waste on their properties that has been generated by the severe weather events by enabling them to remove waste by open air burning, to meet a growing window for crops. The changes are—

- temporarily removing the prohibited activity status under regulations 7, 9, and 10 of the NESAQ for open air burning of certain types of materials, ie, tyres, coated wire, and oil; and
- temporarily removing the requirement for a discharge to air permit under section 15 of the RMA for open air burning of waste materials and overriding any relevant regional plan requirements in the directly affected areas; and
- temporarily exempting HBRC and GDC from needing to apply under the NESAQ to the Minister for the Environment if the burning of waste leads to an exceedance of a contaminant in an airshed in the region. The effect is that the exceedance must be ignored in determining whether the ambient air quality standard for the relevant contaminant has been breached in the airshed, without application to the Minister.

Matters that apply to all recommendations

Affected persons

This order applies to the owners of rural land that is used for agricultural or horticultural activity on a commercial scale and located in a directly affected area.

Directly affected areas

This order defines an affected area as the region of HBRC and the district of GDC (as defined in the Local Government Act 2002).

Revocation date

This order is revoked at the close of 15 December 2023. That allows for the immediate clearing of affected agricultural and horticultural land to enable the resumption of productive activity.

Effects on the environment of recommendations

The effects on the environment, and whether they can be avoided, remedied, or mitigated, have been considered in accordance with section 8(1)(e) of the SWERLA.

There are three key environmental effects as follows:

- ongoing discharges to land (and potentially water) from stockpiled mixed waste as substances unintentionally leach to the soil. This could include oil from machinery and vehicles, and agricultural chemicals:
- discharge of toxic materials to air, water, and soil, including arsenic and dioxins, from burning mixed piles of waste, which could impact air quality and therefore human health. The deposit of contaminants onto roofs and produce could introduce contaminants into the food chain. Those effects could extend beyond the property boundary of the burn site:

- creation of contaminated sites, which may require management under the RMA and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

These effects cannot be avoided but the extent of the effects can be mitigated.

This order includes permitted activity standards to mitigate those effects, by ensuring the weather conditions will not trap the contaminants close to the ground. The standards will also ensure that burn conditions are favourable for reducing contaminant release, and that measures are in place to extinguish the fire if conditions change and present a risk to health or the environment.

This order includes permitted activity standards on—

- separating materials where practicable:
- preparation of a fire management plan, which is to be submitted to the relevant councils. This will include—
 - the timing of the burn:
 - the location of the burn:
 - details of the substances or objects that make up the waste that is to be burnt:
 - forecast weather conditions at the proposed time of the waste burning activity:
 - methods to minimise smoke and other particulates:
 - methods to be used to extinguish the fire:
 - contact details of the responsible person:
- notification of parties (including the relevant regional and district council, Fire and Emergency NZ, the New Zealand Transport Agency, an appropriate medical officer of health, and the owner or occupier of any land adjoining the permitted burn land):
- the wind conditions for the burn activity:
- supervision of the activity at all times:
- soil testing after the burn:
- appropriate disposal of contaminated ash or soil:
- remediation of the site (if required).

Recommendation 1—Temporarily remove the prohibited activity status in the NESAQ for open air burning specified waste

Recommendation 2—Temporarily remove the requirement for an air discharge permit under section 15 of the RMA, and hence a discharge permit under the relevant regional plan, for open air burning of waste materials

Recommendation 3—Temporarily exempt HBRC and GDC from needing to apply under the NESAQ to the Minister for the Environment if the burning of waste leads to an exceedance of a contaminant in an airshed in the region

Summary of recommendations

The NESAQ makes the open air burning of tyres, coated wire, and oil a prohibited activity. A resource consent under section 15 of the RMA cannot be granted for these activities. The recommendation is to temporarily remove the prohibited activity status in the NESAQ for those activities until the close of 1 November 2023.

Open air burning of waste materials other than those prohibited under the NESAQ may be permitted in the relevant regional plan under some circumstances. Otherwise, a resource consent is required under section 15 of the RMA. There is no guarantee that a consent will be granted, or granted within a particular time frame. Consent requirements vary between each regional plan, and do not take into account the type of waste generated by the severe weather events. A consistent approach is required to support the primary sector across the impacted regions.

The NESAQ prohibits the exceedance of ambient air quality standards for specified contaminants in an airshed.

The temporary removal of those requirements would not apply retrospectively. It would be up to the relevant regional council to determine whether they take enforcement action for any retrospective open air burning of waste materials that occurs before an order comes into force.

These recommendations apply to affected persons who have waste material from the severe weather events that needs to be removed quickly in order to enable crops to be planted. The time period was selected to take into account the start of the upcoming growing season and to provide sufficient time for burning before summer.

In order to open air burn mixed waste piles, the landowner would be required to prepare a burn management plan that meets the requirements of the order, and to remediate the burn site following the burn.

Reasons for recommendations

Cyclone-damaged primary sector businesses (especially orchards, viticulture, vegetables, and pastoral farming) are particularly impacted by the volume of mixed waste and debris that has accumulated on their properties. Horticulture NZ estimates 100 horticultural properties across Hawke's Bay have such piles. Removal of the mixed waste is a critical first step before the land can be returned to productivity.

The lack of certainty about when and how mixed waste can be disposed of is creating anxiety for primary sector businesses that are already under immense stress from the severe weather events. The Rural Support Trust has noted the severity of these impacts.

Affected growers and the Ministry for Primary Industries have indicated that the waste needs to be urgently removed by mid-June to meet growing windows for key crops.

The recommendations deliver on the purpose outlined in section 3(2)(b) of the SWERLA. Specifically, these changes will enable legislation to operate more flexibly, to take account of the severe weather events.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 4 July 2023.

This order is administered by the Ministry for the Environment.