



Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 26th day of June 2023

Present:

The Hon Carmel Sepuloni presiding in Council

These regulations are made under section 43 of the Resource Management Act 1991—

- (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 44 of that Act.

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Regulations

1	Title	
	These regulations are the Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023.	

2 Commencement

These regulations come into force on 27 July 2023.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Resource Management Act 1991

back-up device means a heat device that produces industrial process heat—

- (a) for 400 hours or less each year; and
- (b) only when the heat is required but cannot be produced by another heat device at the site because its operation—
 - (i) is prevented by maintenance or an unexpected event; or
 - (ii) is not enough to meet a temporary, additional demand for the heat

carbon dioxide equivalent has the meaning given in section 4(1) of the Climate Change Response Act 2002

climate change effects, for a discharge, means the effects of the discharge on climate change (which are effects on the environment)

emissions plan means an emissions plan that satisfies regulation 15

existing, for a heat device,—

- (a) means a device that, before 27 July 2023, is installed and operational, or able to be operated, at a site; and
- (b) includes a device described in paragraph (a) after it is upgraded or improved; but
- (c) does not include a device that, on or after 27 July 2023, is installed in replacement of a device described in paragraph (a)

fossil fuel—

- (a) means any carbon-based fuel sourced from fossil hydrocarbon deposits; and
- (b) includes—
 - (i) coal, coke, diesel, liquid petroleum gas, natural gas, oil, peat, plastics, and used oil; and
 - (ii) any fuel wholly or partly derived from a fuel described in paragraph (a), including tyres used as fuel; but
- (c) does not include biomass or biogas

heat device—

- (a) means a device that produces industrial process heat (for example, a boiler, furnace, engine, or other combustion device); but
- (b) does not include a device used for the primary purpose of—

- (i) generating electricity, including a generator used for back-up electricity or for maintaining the electricity network; or
- (ii) transmitting electricity, including in mobile and fixed substations

high-emissions site means a site that, each year, emits more than 2,000 tonnes of carbon dioxide equivalent of greenhouse gases from heat devices that—

- (a) burn any fossil fuel; and
- (b) are not back-up devices

industrial process heat—

- (a) means thermal energy that is used—
 - (i) in industrial processes, including in manufacturing and in the processing of raw materials; or
 - (ii) to grow plants or other photosynthesising organisms indoors; but
- (b) does not include thermal energy used in the warming of spaces for people's comfort (for example, heating of commercial offices)

low-emissions site means a site that, each year, emits less than 500 tonnes of carbon dioxide equivalent of greenhouse gases from heat devices that—

- (a) burn any fossil fuel; and
- (b) are not back-up devices

new, for a heat device, means not existing

service means an end-use for which industrial process heat is produced

site means 1 or more parcels of land (whether or not they are contiguous) that are managed as a single operation.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 Regulations apply only to certain effects

These regulations apply—

- (a) only to the climate change effects of the discharge of any greenhouse gas into the air (*see* section 15(2) of the Act); and
- (b) in addition to any other regulations, rules, or requirements about other effects of the discharge.

Part 1

Activities of discharging greenhouse gases from heat devices

Device burns coal

- 6 Restricted discretionary activity: device burns coal, delivers heat at $\geq 300^{\circ}\text{C}$, etc**
- (1) The discharge of any greenhouse gas from a heat device is a restricted discretionary activity if the device—
- (a) burns coal; and
 - (b) delivers heat at or above 300°C ; and
 - (c) is not a back-up device; and
 - (d) is not on a low-emissions site.
- (2) The discretion of a consent authority is restricted to the matters specified in—
- (a) regulations 16 and 17, if the device is new; or
 - (b) regulation 17, if the device is existing.
- (3) A resource consent granted for the activity must—
- (a) last for the term specified in regulation 18; and
 - (b) impose the conditions specified in regulation 19.
- 7 Prohibited activity: device is new, burns coal, and delivers heat at $< 300^{\circ}\text{C}$**
- The discharge of any greenhouse gas from a heat device is a prohibited activity if the device—
- (a) is new; and
 - (b) burns coal; and
 - (c) delivers heat below 300°C .
- 8 Restricted discretionary activity (before 2037): device is existing, burns coal, delivers heat at $< 300^{\circ}\text{C}$, etc**
- (1) The discharge of any greenhouse gas from a heat device is a restricted discretionary activity if the device—
- (a) is existing; and
 - (b) burns coal; and
 - (c) delivers heat below 300°C ; and
 - (d) is not a back-up device; and
 - (e) is not on a low-emissions site.
- (2) The discretion of a consent authority is restricted to the matters specified in regulation 17.

- (3) A resource consent granted for the activity must—
 - (a) last for the term specified in regulation 18; and
 - (b) impose the conditions specified in regulation 19.
- (4) This regulation is revoked on 1 January 2037.
- 9 Prohibited activity (from 2037): device is existing, burns coal, and delivers heat at <300°C**
- (1) The discharge of any greenhouse gas from a heat device is a prohibited activity if the device—
 - (a) is existing; and
 - (b) burns coal; and
 - (c) delivers heat below 300°C.
- (2) This regulation takes effect on 1 January 2037.

Device burns fossil fuel (not coal)

- 10 Restricted discretionary activity: device burns fossil fuel (not coal), etc**
- (1) The discharge of any greenhouse gas from a heat device is a restricted discretionary activity if the device—
 - (a) burns any fossil fuel other than coal; and
 - (b) is not a back-up device; and
 - (c) is not on a low-emissions site.
- (2) The discretion of a consent authority is restricted to the matters specified in—
 - (a) regulations 16 and 17, if the device is new; or
 - (b) regulation 17, if the device is existing.
- (3) A resource consent granted for the activity must—
 - (a) last for the term specified in regulation 18; and
 - (b) impose the conditions specified in regulation 19.

Part 2

Granting of resource consents for restricted discretionary activities

Requirements for granting resource consents for restricted discretionary activities

- 11 Requirements for granting resource consents for restricted discretionary activities**

A resource consent may be granted for a restricted discretionary activity under these regulations only if regulations 12 to 14 have been complied with.

12 Consent authority must decide about site-wide approach to resource consent

- (1) This regulation applies if a consent authority receives an application for a resource consent that—
 - (a) is for any restricted discretionary activity or activities, on a site, under these regulations; and
 - (b) involves 2 or more heat devices on the site, whether new or existing, or both (the **relevant heat devices**).
- (2) In determining the application in respect of the relevant heat devices, the consent authority must decide whether to apply a site-wide approach.
- (3) Under a site-wide approach, the consent authority—
 - (a) considers the total climate change effects of the discharges from all of the relevant heat devices; and
 - (b) if granting the resource consent, imposes any conditions (for example, a condition requiring compliance with an emissions plan, including any emissions reduction target in the plan) by reference to all of the relevant heat devices.

13 Applicant must propose emissions plan

The applicant for a resource consent for a restricted discretionary activity under these regulations must include with their application a proposed emissions plan for the activity.

14 Suitably qualified person must review proposed emissions plan for high-emissions site

- (1) This regulation applies if a restricted discretionary activity under these regulations relates to a heat device on a high-emissions site.
- (2) The applicant for a resource consent for the activity must provide to a suitably qualified person the proposed emissions plan that they intend to include in their application under regulation 13.
- (3) The applicant must ensure that, at the applicant's cost, the suitably qualified person—
 - (a) reviews the proposed emissions plan, including its assessment of the best practicable option; and
 - (b) gives recommendations about whether—
 - (i) the proposed emissions plan satisfies regulation 15; and
 - (ii) the assessment of the best practicable option is correct; and
 - (c) gives reasons for the recommendations.
- (4) The applicant must include the suitably qualified person's recommendations and reasons with their application to the consent authority.

- (5) In this regulation, **suitably qualified person** means a practitioner or other person who the relevant consent authority determines—
- (a) has expertise in the technology and practices of industrial process heat and reduction of greenhouse gas emissions; and
 - (b) is suitably qualified to provide an independent review and recommendations relating to the discharge of any greenhouse gas from a heat device.

15 Purpose and content of emissions plan

- (1) This regulation sets out the purpose and content of an emissions plan for a restricted discretionary activity.
- (2) The purpose is to set out actions and methods to reduce the carbon dioxide equivalent of greenhouse gases discharged from the activity (the **emissions**), including by meeting any emissions reduction targets, in order to encourage, over time,—
 - (a) best practices in energy efficiency; and
 - (b) the transition from heat devices that burn fossil fuels to those that reduce the adverse climate change effects by—
 - (i) using different fuel sources or no fuel; and
 - (ii) emitting lower, or zero, emissions.
- (3) The content must include the following matters:
 - (a) the purpose of the activity and the 1 or more services to which it relates;
 - (b) the number of heat devices that are not back-up devices and are on, or proposed for, the site of the activity, and their age and fuel source (if any);
 - (c) both the thermal energy that is, or is to be, produced, and the thermal energy that is able to be produced, by—
 - (i) the heat device on or proposed for the site, if there is 1 such device; or
 - (ii) the heat devices on or proposed for the site, in total but separated by fuel source (if any), if there are 2 or more such devices;
 - (d) if the activity involves a new heat device, an assessment of any technically feasible and financially viable lower-emissions alternatives (as defined by regulation 16(2)) to the heat device;
 - (e) for any new or existing heat device that the activity involves,—
 - (i) an assessment of the best practicable option to prevent or minimise any actual or likely adverse climate change effect of—
 - (A) the activity; and

- (B) other discharges of greenhouse gases from all heat devices that are not back-up devices and are on or proposed for the same site (if any):
 - (ii) an assessment of any energy efficiency improvements that are available for the activity;
 - (iii) whether, and how, any of those improvements will be made;
 - (iv) a transition pathway that sets out—
 - (A) actions or methods to prevent or minimise the emissions and the adverse climate change effects of the activity; and
 - (B) emissions reduction targets for the activity that are appropriate for the scale, type, and site-specific circumstances of the activity, unless the best practicable option under subparagraph (i) provides no reasonable prospect of reducing the emissions during the term of the resource consent.
- (4) The content may include anything else relating to a matter to which the consent authority's discretion is restricted for the activity.
- (5) To avoid doubt, subclause (3)(b), (c), and (e)(i)(B) applies to all heat devices that are not back-up devices and are on or proposed for a site,—
 - (a) whether or not an existing resource consent applies to the devices, but subject to section 43B(6) to (7) of the Act (which states how existing resource consents prevail over these regulations); and
 - (b) whether or not they burn any fossil fuel.

Restricted discretionary activity: matters to which discretion is restricted

16 Matter specific to new device

- (1) For any restricted discretionary activity under these regulations that involves a new heat device, the specific matter to which a consent authority's discretion is restricted is the assessment of any technically feasible and financially viable lower-emissions alternatives to the heat device.
- (2) A **technically feasible and financially viable lower-emissions alternative** is an alternative to the proposed heat device that—
 - (a) provides an equivalent service while discharging a lower, or zero, carbon dioxide equivalent of greenhouse gases; and
 - (b) is technically feasible for the applicant to use to provide the service, having regard to the current state of technical knowledge and the likelihood that the alternative can be successfully applied; and
 - (c) is financially viable, taking into account the following expected costs and benefits during a 20-year period starting on the date of the application:
 - (i) all capital costs:

- (ii) all operating costs:
- (iii) any financial benefits.

17 Matters common to new and existing devices

- (1) For any restricted discretionary activity under these regulations, the common matters to which a consent authority's discretion is restricted are as follows:
 - (a) the assessment of the best practicable option to prevent or minimise any actual or likely adverse climate change effect of—
 - (i) the activity; and
 - (ii) other discharges of greenhouse gases from all heat devices that are not back-up devices and are on or proposed for the same site (if any):
 - (b) the assessment of any energy efficiency improvements that are available for the activity:
 - (c) the actions or methods to prevent or minimise the carbon dioxide equivalent of greenhouse gases discharged from the activity (the **emissions**) and the adverse climate change effects of the activity:
 - (d) any emissions reduction targets for the activity:
 - (e) the content of an emissions plan for the activity:
 - (f) requirements for the person to monitor the activity and report on it to the consent authority:
 - (g) the time frame for the consent authority to review the conditions of a resource consent granted for the activity.
- (2) To avoid doubt, subclause (1)(a)(ii) applies to all heat devices that are not back-up devices and are on or proposed for a site,—
 - (a) whether or not an existing resource consent applies to the devices, but subject to section 43B(6) to (7) of the Act (which states how existing resource consents prevail over these regulations); and
 - (b) whether or not they burn any fossil fuel.

Restricted discretionary activity: term of resource consent and its conditions

18 Term of resource consent for new and existing devices

- (1) This regulation specifies the term for which a resource consent must be granted for a restricted discretionary activity under these regulations.
- (2) If the activity relates to a new heat device, the term must be 20 years or less.
- (3) If the activity relates to an existing heat device, the term—
 - (a) must be 10 years or less; and
 - (b) if the heat device burns coal and delivers heat below 300°C, must end before 1 January 2037.

19 Conditions of resource consent for new and existing devices

- (1) For any restricted discretionary activity under these regulations, the conditions that must be imposed in a resource consent granted for the activity are specified in this regulation.
- (2) The first condition requires the holder to adopt the best practicable option described by regulation 17(1)(a), as assessed by the consent authority.
- (3) The second condition requires the holder to comply with an emissions plan for the activity that the consent authority has determined satisfies regulation 15.
- (4) The third condition requires the holder to monitor their compliance with the emissions plan, including any emissions reduction targets, and to report to the consent authority on their monitoring.
- (5) To avoid doubt, other conditions may be imposed in accordance with section 104C(3) of the Act.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

1 Existing permitted activities under certain rules continue for 18 months

- (1) This clause applies if, immediately before 27 July 2023, a discharge to which these regulations apply is a permitted activity under a regional rule that has legal effect.
- (2) The discharge remains a permitted activity under the rule until the end of 26 January 2025, or until the rule ends if that happens sooner, despite the rule being more lenient than these regulations.
- (3) See sections 43A(1)(e) and 43B(3) of the Act.

2 Existing activities under discharge permits

See section 43B(6) to (9) of the Act.

Diana Hawker,
Acting Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are the Resource Management (National Environmental Standards for Greenhouse Gas Emissions from Industrial Process Heat) Regulations 2023. They come into force on 27 July 2023.

The regulations relate to—

- heat devices that produce industrial process heat (for example, boilers, furnaces, or engines); and
- the climate change effects of the discharge of any greenhouse gas into the air (a **discharge**).

If a discharge is an existing permitted activity under a regional rule that has legal effect, it remains a permitted activity under that rule for 18 months after 27 July 2023.

Part 1: activities of discharging greenhouse gases from heat devices

Heat devices that burn coal

The following relates to heat devices that burn coal.

For a device that delivers heat at or above 300°C, it is a restricted discretionary activity to discharge from a device (whether new or existing) unless it is a back-up device or on a low-emissions site (*see regulation 6*).

For a device that delivers heat below 300°C,—

- discharging from a new device is a prohibited activity (*see regulation 7*);
- discharging from an existing device is—
 - a restricted discretionary activity before 2037 unless it is a back-up device or on a low-emissions site (*see regulation 8*);
 - a prohibited activity from 2037 (*see regulation 9*).

Heat devices that burn other fossil fuel

The following relates to heat devices that burn any fossil fuel other than coal.

It is a restricted discretionary activity to discharge from a device (whether new or existing) unless it is a back-up device or on a low-emissions site (*see regulation 10*).

Part 2: granting of resource consents for restricted discretionary activities

A resource consent may be granted for a restricted discretionary activity under the regulations only if—

- the consent authority first decides whether to apply a site-wide approach, if applicable (*see regulation 12*); and
- the applicant provides a proposed emissions plan for the activity (*see regulation 13*); and
- for a heat device on a high-emissions site, the applicant obtains and provides a suitably qualified person's recommendations and reasons relating to the proposed emissions plan (*see regulation 14*).

Regulation 15 sets out the purpose of an emissions plan and its required content.

If a restricted discretionary activity involves a new device, the discretion of a consent authority is restricted to the specific matter specified in *regulation 16* and the common matters specified in *regulation 17*. If a restricted discretionary activity involves an existing device, discretion is restricted to the common matters. In either case, a resource consent for the activity must last for the term specified in *regulation 18* and impose the conditions specified in *regulation 19*.

Regulatory impact statement

The Ministry for the Environment produced a regulatory impact statement on 17 August 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the regulatory impact statement can be found at—

- <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/regulatory-impact-statement-national-direction-under-the-rma-on-industrial-greenhouse-gas-emissions/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

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These regulations are administered by the Ministry for the Environment.