

**ABATEMENT NOTICE  
SECTION 324, RESOURCE MANAGEMENT ACT 1991**

**TO:** Horowhenua District Council ("HDC")  
**ADDRESS:** 126 Oxford Street  
Private Bag 4002  
LEVIN 5510

**The Manawatu-Wanganui Regional Council gives notice that you must cease the following action:**

The unauthorised discharge of a contaminant to air from an industrial or trade premise<sup>1</sup>, namely offensive or objectionable odour, to air, beyond the property boundary of the Levin Landfill.

**The location in respect of which this abatement notice applies is:** A property located on Hokio Beach Road, Levin, which is legally owned by HDC. The property is located at approximate map references NZTM X:1787118 Y:5502583 and has a legal description of Lot 3 DP 40743

**You must comply with this abatement notice:** Immediately upon receipt of this notice and no later than 5.00 p.m. Friday 30 June 2017.

You must also continue to comply with this notice after 5.00 p.m. Friday 30 June 2017.

**This notice is issued under:** Section 322(1)(a)(i) of the Resource Management Act 1991 ("RMA"), which states:

- "(1) An abatement notice may be served on any person by an enforcement officer—
- (a) Requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—
  - (i) Contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or"

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<sup>1</sup> For the purpose of this Abatement Notice the definition of Industrial or Trade Premises as detailed in Section 2 (Interpretation) of the RMA applied. Section 2 states an Industrial or Trade Premise means—

- (a) Any premises used for any industrial or trade purposes; or
- (b) Any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or
- (c) Any other premises from which a contaminant is discharged in connection with any industrial or trade process—

... but does not include any production land:

**The reasons for this notice are:**

1. Section 15(1)(c) of the Resource Management Act 1991 (RMA) states:.

*(1) No person may discharge any—...*

*(c) Contaminant from any industrial or trade premises into air;...*

*unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.*

2. There is no National Environmental Standard or other regulations that authorise the discharge of contaminant, including odour, from an industrial or trade premise into air.

3. Rule 15-17 of the Regional Plan states;

*The discharge of contaminants into air pursuant to ss15(1) or 15(2A) RMA and any subsequent discharge of contaminants onto land from activities which either:*

*(a) are located on industrial or trade premises<sup>^</sup> and are not addressed by any other rule<sup>^</sup> in this Plan, or...*

*Discharges that are covered by this rule under (a) include, but are not limited to, those activities listed in the rule guide following this rule table.*

**Rule Guide:**

*Activities covered by Rule 15-17 - Discharges into air that are a discretionary activity under Rule 15-17(a) include...*

*(i) solid waste\* disposal, excluding farm dumps and offal holes...*

Any activity falling under Rule 15-17 of the regional Plan is a **Discretionary Activity**, requiring resource consent.

4. The Levin landfill is a considered an industrial or trade premise under section 2 of the RMA that defines an industrial or trade premise as being:

*“(b) any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or”*

5. In 1998 the Manawatu-Wanganui Regional Council (“HRC”) granted resource consent 6011, pursuant to the RMA to HDC authorising the discharge of landfill gas, odour and dust to air at the Levin landfill, subject to conditions.

6. A formal review, completed on 31 May 2010, resulted in the current conditions for resource consent 6011. Of relevance to this matter is resource consent condition 3 which states:

*“3. There shall be no discharge of odour or dust from the landfill that in the opinion of a Regional Council Enforcement Officer is noxious, dangerous, offensive, or objectionable beyond the property boundary...”*

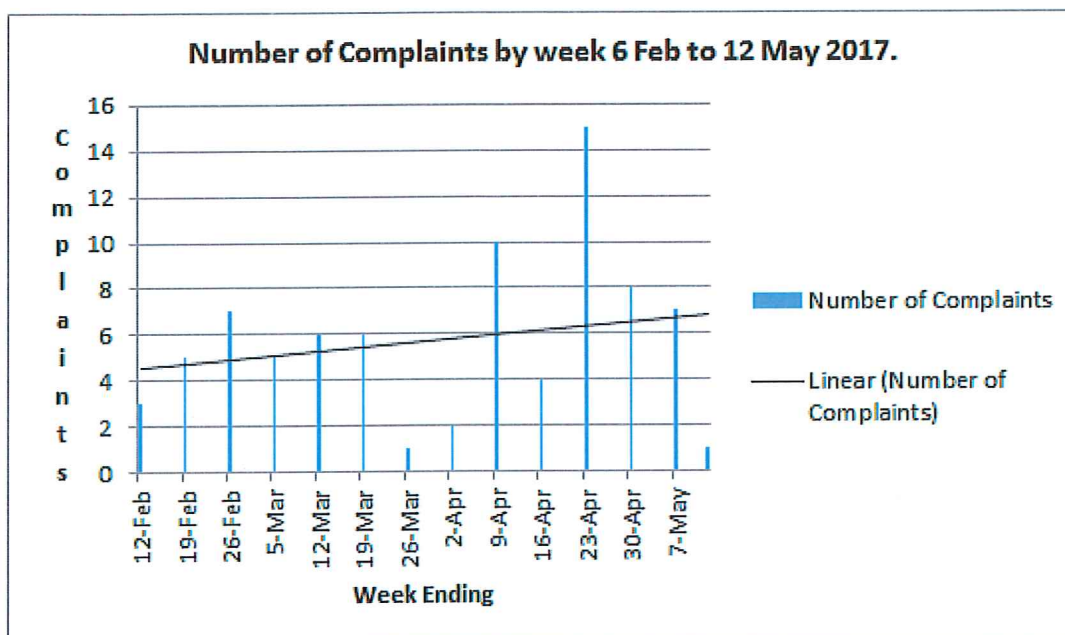
7. When determining whether an odour is offensive or objectionable HRC enforcement officers must consider the frequency, intensity, duration, offensiveness/character and location of an odour event. These parameters are known as the FIDOL factors and are described in Table 1 below.

<b>Frequency</b>	How often an individual is exposed to the odour.
<b>Intensity</b>	The strength of the odour. Measured on a scale of 0 to 6.
<b>Duration</b>	The length of exposure.
<b>Offensiveness/character</b>	The character relates to the 'hedonic tone' of the odour, which may be pleasant, neutral or unpleasant. On a scale of -4 (Extremely unpleasant) to 4 (Extremely pleasant).
<b>Location</b>	The type of land use and nature of human activities in the vicinity of an odour source.

Table 1: Description of the FIDOL factors.

8. Odour is monitored by officers using a number of technics including completion of an odour assessment form. In completing an assessment form the officer uses an interval method, noting the odour intensity every 10 seconds for 10 minutes. The officer will indicate the hedonic tone of the odour and note the type of land use affected by the odour. This information is recorded on the assessment form along with weather information. To determine the frequency and duration of odour events an officer may request that an odour diary is kept by affected complainants. This approach is consistent with best practice in assessing odour as per the Ministry for the Environment Guidelines, titled, "*Good Practice Guide for Assessing and Monitoring Odour*", and dated 2016.
9. The above odour monitoring method has been utilised in assessing the Levin Landfill against condition 3 of recourse consent 6011.
10. HRC undertook a compliance assessment of resource consent 6011 on 19 June 2017, for a period covering 6 February to 1 June 2017.
11. As part of this assessment a review of the complainant's odour diary, for the 6 February to 1 June 2017 assessment period shows 81 entries between 6 February 2017 and 12 May 2017, this is summarised below in Figure 1. Of these 81 entries there are 20 entries where the odour intensity is a 4 or above, or the odour duration is an hour or longer.





**Figure 1:** Number of Odour Complaints from Primary Complainant by Week 6 Feb to 12 May 2017.

9. In conjunction with the complainant's odour diary, HRC undertook a series of odour assessments at the complainant's address. These assessments were undertaken on a reactive (complainant's request) or proactive (HRC actioned) basis. From these assessments eight completed assessment forms were available. These assessments are described in specific detail and summarised in Table 2 below:
  - a. On 14 March 2017, 9:35 am, a HRC Enforcement Officer undertook a proactive odour assessment on the complainant's driveway approximately twenty metres from their dwelling. The weather was cloudy, mild, with a light swirling breeze. No odour was detected.
  - b. On 20 April 2017, 12:47 pm, a HRC Enforcement Officer undertook a proactive odour assessment on the complainant's driveway approximately twenty metres from their dwelling. The weather was sunny, warm, with a light, slightly swirling, southerly breeze. An intermittent odour was detected at an intensity of 0 to 2, with a hedonic tone of -3. The odour was identified as been Landfill Gas ("LFG"). The assessment concluded that the odour was not objectionable unless it became continuous. It was also noted the *"wind was swirling lightly on & off which may have helped to make odour inconsistent?"*
  - c. On 10 May 2017, 12:45 pm, a HRC Enforcement Officer undertook a proactive odour assessment at the complainant's address. The weather was mostly sunny, mild to warm, with a light easterly breeze. No odour was detected
  - d. On 12 May 2017, 1:30 pm, a HRC Enforcement Officer undertook a proactive odour assessment on the complainant's driveway approximately twenty metres from their dwelling. The weather was slightly cloudy, cool, with a gentle, south easterly breeze. An intermittent odour was detected at an intensity of 0 to 3, with a hedonic tone of -2. The odour had a distinct rotting food characteristic. It was concluded the odour was not objectionable, unless it became continuous.
  - e. On 28 May 2017, 6:25 pm, a HRC Enforcement Officer undertook a reactive odour assessment immediately outside complainant's dwelling. It was dark so cloud

cover could not be determined, however the temperature was mild, and wind conditions were still. A continuous odour was detected at an intensity of 1 to 2, with a hedonic tone of -2. The odour had a distinct LFG characteristic. It was concluded the odour would be objectionable, if it occurred on a regular or frequent basis. The officer continued the odour assessment for twenty minutes, during this time there was no abatement of the odour. The officer also noted: *"Was standing next to \*\*\*\* (complainant) during assessment \*\*\* said it was stronger when \*\*\*\*\* rang @ 1728."*

- f. On 31 May 2017, 9:18 am, a HRC Enforcement Officer undertook a reactive odour assessment inside the complainants dwelling and then moved outside during the eighth minute of the assessment. The weather was sunny, calm and cool. The officer detected a constant odour intensity of 1 to 3 inside the dwelling and an odour intensity of 0 to 1 outside the dwelling and determined the hedonic tone as -1. The odour was also identified as being of a LFG character. It was concluded the odour would be objectionable, if it occurred on a regular or frequent basis. The officer also noted: *"odour was present all through the house this morning (≈ 7am) The \*\*\*\*\* (complainant) trapped the odour in the laundry & the bathroom & aired out the rest of the house."*
- g. Immediately after the indoor assessment the HRC Enforcement Officer undertook an additional proactive odour assessment on the complainant's driveway approximately twenty metres from their dwelling. A light south westerly was present at the time and no odour was detected.
- h. On 1 June 2017, 10:30 am, a HRC Enforcement Officer undertook a proactive odour assessment on the complainant's driveway approximately twenty metres from their dwelling. The weather was sunny, mild, and the wind calm. Although the officer detected an occasional very weak odour he determined the odour would not be objectionable at any location for any duration or frequency.

Odour Nature/Assessment Type.	No odour.	Odour detected but not objectionable.	Odour detected not objectionable UNLESS continuous.	Odour detected and would be objectionable if occurred regularly or frequently.	Odour detected and would be objectionable even in short duration.	Total.
Proactive assessment.	3	1	2	0	0	6
Reactive assessment.	0	0	0	2	0	2
<b>Total.</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>8</b>

**Table 2:** Results of odour assessment forms completed by HRC Consents Monitoring Officers 14 March – 1 June 2017.

10. After considering the available information, including odour diaries from the primary complainant and HRC's own odour assessments, it is the opinion of an HRC Enforcement Officer that odour from the Levin Landfill has, at times, been objectionable beyond the property boundary during the period of 6 February to 1 June 2017.
11. The discharge of contaminants, namely objectionable odour, beyond the boundary of the Levin Landfill is not expressly allowed by resource consent 6011.



12. By discharging an objectionable odour beyond the property boundary of the Levin Landfill located on Hokio Beach Road, Levin, HDC has, in the opinion of an Enforcement Officer, contravened section 15 (1)(c) of the RMA 1991.
13. By contravening section 15(1)(c) of the RMA 1991 HDC has, in the opinion of an Enforcement Officer, committed an offence under section 338(1)(a) of the RMA 1991.
14. HDC is required to cease the unauthorised discharge of a contaminant to air from an industrial or trade premise, namely objectionable odour to air beyond the property boundary of the Levin Landfill, located on Hokio Beach Road, Levin, to ensure further contraventions of the RMA 1991 do not occur.

**If you do not comply with this notice, you may be prosecuted under Section 338 of the Resource Management Act 1991 (unless you appeal and the notice is stayed as explained below).**

**You have the right to appeal to the Environment Court against the whole or any part of this notice. If you wish to appeal, you must lodge a notice of appeal in form 49 with the Environment Court within 15 working days of being served with this notice.**

**You also have the right to apply in writing to the Manawatu-Wanganui Regional Council to change or cancel this notice in accordance with Section 325A of the Resource Management Act 1991.**

The Manawatu-Wanganui Regional Council **authorised the enforcement officer who issued this notice. Its address is:** Manawatu-Wanganui Regional Council, Private Bag 11025, Manawatu Mail Centre, Palmerston North 4442.

**The enforcement officer is acting under the following authorisation:** A warrant of authority issued by the Manawatu-Wanganui Regional Council, pursuant to section 38 of the Resource Management Act 1991, authorising the officer to carry out all or any of the functions and powers as an enforcement officer under the Resource Management Act 1991.



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(Signature of enforcement officer)

27 June 2017.

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(Date)