

MEDIA RELEASE: Was or is Taranaki fracking illegal?

DATE: 21 September 2011 - for immediate release

FROM: Climate Justice Taranaki

A recent Official Information Act request by local group Climate Justice Taranaki (CJT) reveals that fracking and drilling now suddenly need a consent from the Taranaki Regional Council under the Resource Management Act (RMA). The climate group is investigating whether all the fracking and drilling of recent years therefore took place illegally.

“We have obtained a letter from the Taranaki Regional Council (TRC) to the oil and gas companies which says that after seeking legal advice a resource consent is now required under several sections of the Resource Management Act that deals with discharge of contaminants” says CJT member Emily Bailey.

The Chief Executive of TRC says they received a legal opinion by law firm Simpson Grierson after “some members of society ... expressed concern about fracking”. The legal opinion however is being withheld because it is deemed it will breach 'legal professional privilege' under Section 7(2)g of the Local Government Official Information & Meetings Act 1987.

The letter to the companies, dated 29 July 2011, states that “from the date of this letter, resource consent will be required for fracking in Taranaki under Rule 44 [of the Fresh Water Plan].”

“We're glad the Regional Council made fracking and all drilling an activity that requires a resource consent however TRC says these consents are 'likely to be processed as non-notified' which locks the community out of important discussions concerning our community's well-being. The recent rushed policy change puts into question TRC's upholding of its obligations under the RMA. The Council's new contemplation that fracking could become a permitted activity under the revised Fresh Water Plan because they assume it has 'no more than minor adverse effects and lack of affected parties', is completely contrary to growing evidence from similar practices overseas.”

“Given that the Fresh Water Plan has been in place for 10 years and the RMA came into effect in 1991, we now have serious concerns that fracking has been taking place in the Taranaki region illegally and that it is about to be swept under the carpet again under new and inadequate policy. The RMA states clearly that discharge of contaminants from industrial premises into land requires a resource consent to minimise adverse effects. Companies like TAG Oil and Todd Energy have in recent years pumped countless litres of highly toxic chemicals into the earth to access 'tight' oil and gas. These fracking chemicals are then discharged into our environment along with other toxic drilling chemicals all companies use to drill their wells. It is not best practice.”

“Also in the letter is mention that some companies have so far refused to 'voluntarily supply information on fracking' during Council's attempt to compile an information sheet. While it does not state which companies weren't co-operating, the Council has indicated that they will be 'identified in any public communication on the matter'. It is frustrating that TRC assumed minor effects when they do not know all the chemicals being used.”

Climate Justice Taranaki will keep pushing for a ban on fracking.

Researcher Robyn Harris-Iles comments: "Fracking is by far the worst environmental disaster we are facing in this country because the process not only endangers our groundwater aquifers with toxic chemicals and radioactive particles; these poisonous toxins and heavy metals are spread on land and discharged into our streams, rivers and coastal waters. Pollution from fracking also affects the air we breathe, with dangerous gases being emitted throughout the process. We need to put an end to fossil fuel extraction by developing clean alternative energy that protects us and our environment for future generations."

ENDS

Contact: climatejusticetaranaki@riseup.net

NOTES

1. The letter from TRC to the companies is attached ([download here](#)).
2. Relevant Resource Management Act - Section 151(a, b and d):
Discharge of contaminants into environment
(1) No person may discharge any—
(a) contaminant or water into water; or
(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
(c) contaminant from any industrial or trade premises into air; or
(d) contaminant from any industrial or trade premises onto or into land—
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.

Rule 44 of the TRC Fresh Water Plan states the above.

29 July 2011

Fracking under the Resource Management Act 1991

You are receiving this letter because you hold resource consents for hydrocarbon exploration and production activities in Taranaki.

Some members of society have recently expressed concern about the potential adverse environmental effects of the activity of fracking, a practice used by the oil and gas industry to enhance hydrocarbon recovery. The Council had held the view that the activity had very minimal environmental effect, given the depth it was undertaken beneath the surface and the thickness and nature of any overlying geological formations. Therefore it was considered the activity did not require regulation under the Resource Management Act (RMA). However, legal advice was recently sought on the matter to provide clarity.

The legal opinion has recently been received and it notes while the situation is complex a resource consent under the RMA could be required. A resource consent could be required under section 15 1 (d) and possibly under sections 15 1 (a) and (b) of the RMA, depending on the temperature/depth and particular circumstances of the situation. The Council has accepted this advice and accordingly reviewed its position.

The Council's Regional Fresh Water Plan for Taranaki (2001) contains catch-all type rules to cover discharge activities that are not specifically addressed elsewhere in the Plan. Of particular note is Rule 44 relating to the discharge of contaminants to land from industrial or trade premises. This rule, which includes section 15 1 (d) RMA requirements, is for a discretionary activity and could be applied to discharges from the activity of fracking.

Hence, from the date of this letter, resource consent will be required for fracking in Taranaki under Rule 44. Such applications are likely to be processed as non-notified given their no more than minor adverse effects and lack of affected parties given the depth that they occur. However, each application will be assessed on a case by case basis.

If you are currently in the midst of a fracking, then contact the undersigned and it is likely relief for a transition period could be granted. However, this would depend on the particular circumstances.

The Council has informed PEPANZ of the approach being taken to regulating fracking and intends, as a part of the review of the Plan, to maintain discussions to develop a specific rule that will address fracking. Other stakeholders will also be part of this dialogue. Given the minimal environmental effects of the activity it could be considered a permitted or

controlled activity under a revised Plan. However, this is part of the public process as part of that Plan review.

For those of you who may operate outside this region, the legal opinion will be shared with other regional/unitary councils. The Council will also share the work associated with developing a specific rule under its regional plan so other councils may consider this when reviewing their plans. This approach is supported by PEPANZ and should result in a consistent approach. However, this will be dependent upon the particular circumstances in each region.

The Council is currently preparing an information sheet for applicants to set out the information that will be required for a fracing activity application.

On 24 May 2011 the Council requested that you voluntarily supply information on fracing undertaken by your company as part of a review of the activity. There was an excellent response to the request with most supplying the data by the end of June 2011 deadline. The Council thanks those who have replied. The data is currently being reviewed. For the few who have not supplied the information a follow up letter will be sent shortly. Those who choose not to reply will be identified in any public communication on the matter.

If you have any queries regarding any of the above please contact the undersigned.

Yours faithfully
B G Chamberlain
Chief Executive

per: AD McLay
Director-Resource Management